

ASIAN TERMINALS, INC., PETITIONER, VS. MALAYAN INSURANCE, CO., INC., RESPONDENT.

G.R. No. 171406. April 04, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Once the insurer pays the insured, equity demands reimbursement as no one should benefit at the expense of another.

This Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assails the July 14, 2005 Decision[2] and the February 14, 2006 Resolution[3] of the Court of Appeals (CA) in CA G.R. CV No. 61798.

Factual Antecedents

On November 14, 1995, Shandong Weifang Soda Ash Plant shipped on board the vessel MV "Jinlian I" 60,000 plastic bags of soda ash dense (each bag weighing 50 kilograms) from China to Manila.[4] The shipment, with an invoice value of US\$456,000.00, was insured with respondent Malayan Insurance Company, Inc. under Marine Risk Note No. RN-0001-21430, and covered by a Bill of Lading issued by Tianjin Navigation Company with Philippine Banking Corporation as the consignee and Chemphil Albright and Wilson Corporation as the notify party.[5]

On November 21, 1995, upon arrival of the vessel at Pier 9, South Harbor, Manila,[6] the stevedores of petitioner Asian Terminals, Inc., a duly registered domestic corporation engaged in providing arrastre and stevedoring services,[7] unloaded the 60,000 bags of soda ash dense from the vessel and brought them to the open storage area of petitioner for temporary storage and safekeeping, pending clearance from the Bureau of Customs and delivery to the consignee.[8] When the unloading of the bags was completed on November 28, 1995, 2,702 bags were found to be in bad order condition.[9]

On November 29, 1995, the stevedores of petitioner began loading the bags in the trucks of MEC Customs Brokerage for transport and delivery to the consignee.[10] On December 28, 1995, after all the bags were unloaded in the warehouses of the consignee, a total of 2,881 bags were in bad order condition due to spillage, caking, and hardening of the contents.[11]

On April 19, 1996, respondent, as insurer, paid the value of the lost/ damaged cargoes to the consignee in the amount of P643,600.25.[12]

Ruling of the Regional Trial Court

On November 20, 1996, respondent, as subrogee of the consignee, filed before the Regional Trial Court (RTC) of Manila, Branch 35, a Complaint[13] for damages against petitioner, the shipper Inchcape Shipping Services, and the cargo broker MEC Customs Brokerage.[14]

After the filing of the Answers,[15] trial ensued.

On June 26, 1998, the RTC rendered a Decision[16] finding petitioner liable for the damage/loss sustained by the shipment but absolving the other defendants. The RTC found that the proximate cause of the damage/loss was the negligence of petitioner's stevedores who handled the unloading of the cargoes from the vessel.[17] The RTC emphasized that despite the admonitions of Marine Cargo Surveyors Edgar Licalde and Redentor Antonio not to use steel hooks in retrieving and picking-up the bags, petitioner's stevedores continued to use such tools, which pierced the bags and caused the spillage.[18] The RTC, thus, ruled that petitioner, as employer, is liable for the acts and omissions of its stevedores under Articles 2176[19] and 2180 paragraph (4)[20] of the Civil Code.[21] Hence, the dispositive portion of the Decision reads:

WHEREFORE, judgment is rendered ordering defendant Asian Terminal, Inc. to pay plaintiff Malayan Insurance Company, Inc. the sum of P643,600.25 plus interest thereon at legal rate computed from November 20, 1996, the date the Complaint was filed, until the principal obligation is fully paid, and the costs.

The complaint of the plaintiff against defendants Inchcape Shipping Services and MEC Customs Brokerage, and the counterclaims of said defendants against the plaintiff are dismissed.

SO ORDERED.[22]

Ruling of the Court of Appeals

Aggrieved, petitioner appealed[23] to the CA but the appeal was denied. In its July 14, 2005 Decision, the CA agreed with the RTC that the damage/loss was caused by the negligence of petitioner's stevedores in handling and storing the subject shipment.[24] The CA likewise rejected petitioner's assertion that it received the subject shipment in bad order condition as this was belied by Marine Cargo Surveyors Redentor Antonio and Edgar Licalde, who both testified that the actual counting of bad order bags was done only after all the bags were unloaded from the vessel and that the Turn Over Survey of Bad Order Cargoes (TOSBOC) upon which petitioner anchors its defense was prepared only on November 28, 1995 or after the unloading of the bags was completed.[25] Thus, the CA disposed of the appeal as follows:

WHEREFORE, premises considered, the appeal is DENIED. The assailed Decision dated June 26, 1998 of the Regional Trial Court of Manila, Branch 35, in Civil Case No. 96-80945 is hereby AFFIRMED in all respects.

SO ORDERED.[26]

Petitioner moved for reconsideration[27] but the CA denied the same in a Resolution[28] dated February 14, 2006 for lack of merit.

Issues

Hence, the present recourse, petitioner contending that:

- RESPONDENT-INSURER IS NOT ENTITLED TO THE RELIEF GRANTED AS IT FAILED TO ESTABLISH ITS CAUSE OF ACTION AGAINST HEREIN PETITIONER SINCE, AS THE ALLEGED SUBROGEE, IT NEVER PRESENTED ANY VALID, EXISTING, ENFORCEABLE INSURANCE POLICY OR ANY COPY THEREOF IN COURT.
- THE HONORABLE COURT OF APPEALS ERRED WHEN IT OVERLOOKED THE FACT THAT THE TOSBOC & RESBOC WERE ADOPTED AS COMMON EXHIBITS BY BOTH PETITIONER AND RESPONDENT.
- CONTRARY TO TESTIMONIAL EVIDENCE ON RECORD, VARIOUS DOCUMENTATIONS WOULD POINT TO THE VESSEL'S LIABILITY AS THERE IS, IN THIS INSTANT CASE, AN OVERWHELMING DOCUMENTARY EVIDENCE TO PROVE THAT THE DAMAGE IN QUESTION WERE SUSTAINED

WHEN THE SHIPMENT WAS IN THE CUSTODY OF THE VESSEL.

- THE HONORABLE COURT OF APPEALS ERRED WHEN IT ADJUDGED HEREIN DEFENDANT LIABLE DUE TO [THE] FACT THAT THE TURN OVER SURVEY OF BAD ORDER CARGOES (TOSBOC) WAS PREPARED ONLY AFTER THE COMPLETION OF THE DISCHARGING OPERATIONS OR ON NOVEMBER 28, 1995. THUS, CONCLUDING THAT DAMAGE TO THE CARGOES WAS DUE TO THE IMPROPER HANDLING THEREOF BY ATI STEVEDORES.

- THE HONORABLE COURT OF APPEALS ERRED IN NOT TAKING JUDICIAL NOTICE OF THE CONTRACT FOR CARGO HANDLING SERVICES BETWEEN PPA AND ATI AND APPLYING THE PERTINENT PROVISIONS THEREOF AS REGARDS ATI'S LIABILITY.[29]

In sum, the issues are: (1) whether the non-presentation of the insurance contract or policy is fatal to respondent's cause of action; (2) whether the proximate cause of the damage/loss to the shipment was the negligence of petitioner's stevedores; and (3) whether the court can take judicial notice of the Management Contract between petitioner and the Philippine Ports Authority (PPA) in determining petitioner's liability.

Petitioner's Arguments

Petitioner contends that respondent has no cause of action because it failed to present the insurance contract or policy covering the subject shipment.[30] Petitioner argues that the Subrogation Receipt presented by respondent is not sufficient to prove that the subject shipment was insured and that respondent was validly subrogated to the rights of the consignee.[31] Thus, petitioner submits that without proof of a valid subrogation, respondent is not entitled to any reimbursement.[32]

Petitioner likewise puts in issue the finding of the RTC, which was affirmed by the CA, that the proximate cause of the damage/loss to the shipment was the negligence of petitioner's stevedores.[33] Petitioner avers that such finding is contrary to the documentary evidence, i.e., the TOSBOC, the Request for Bad Order Survey (RESBOC) and the Report of Survey.[34] According to petitioner, these documents prove that it received the subject shipment in bad order condition and that no additional damage was sustained by the subject shipment under its custody.[35] Petitioner asserts that although the TOSBOC was prepared only after all the bags were unloaded by petitioner's stevedores, this does not mean that the damage/loss was caused by its stevedores.[36]

Petitioner also claims that the amount of damages should not be more than P5,000.00, pursuant to its Management Contract for cargo handling services with the PPA.[37] Petitioner contends that the CA should have taken judicial notice of the said contract since it is an official act of an executive department subject to judicial cognizance.[38]

Respondent's Arguments

Respondent, on the other hand, argues that the non-presentation of the insurance contract or policy was not raised in the trial court. Thus, it cannot be raised for the first time on appeal.[39] Respondent likewise contends that under prevailing jurisprudence, presentation of the insurance policy is not indispensable.[40] Moreover, with or without the insurance contract or policy, respondent claims that it should be allowed to recover under Article 1236[41] of the Civil Code.[42] Respondent further avers that "the right of subrogation has its roots in equity - it is designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one who in justice, equity and good conscience ought to pay." [43]

Respondent likewise maintains that the RTC and the CA correctly found that the damage/loss sustained by the subject shipment was caused by the negligent acts of petitioner's stevedores.[44] Such factual findings of the RTC, affirmed by the CA, are conclusive and should no longer be disturbed.[45] In fact, under Section 1[46] of Rule 45 of the Rules of Court, only questions of law may be raised in a petition for review on certiorari.[47]

As to the Management Contract for cargo handling services, respondent contends that this is outside the operation of judicial notice.[48] And even if it is not, petitioner's liability cannot be limited by it since it is a contract of adhesion.[49]

Our Ruling

The petition is bereft of merit.

Non-presentation of the insurance contract or policy is not fatal in the instant case

Petitioner claims that respondent's non-presentation of the insurance contract or policy between the respondent and the consignee is fatal to its cause of action.

We do not agree.

First of all, this was never raised as an issue before the RTC. In fact, it is not among the issues agreed upon by the parties to be resolved during the pre-trial.[50] As we have said, "the determination of issues during the pre-trial conference bars the consideration of other questions, whether during trial or on appeal." [51] Thus, "[t]he parties must disclose during pre-trial all issues they intend to raise during the trial, except those involving privileged or impeaching matters. x x x The basis of the rule is simple. Petitioners are bound by the delimitation of the issues during the pre-trial because they themselves agreed to the same." [52]

Neither was this issue raised on appeal.[53] Basic is the rule that "issues or grounds not raised below cannot be resolved on review by the Supreme Court, for to allow the parties to raise new issues is antithetical to the sporting idea of fair play, justice and due process." [54]

Besides, non-presentation of the insurance contract or policy is not

necessarily fatal.[55] In *Delsan Transport Lines, Inc. v. Court of Appeals*, [56] we ruled that:

Anent the second issue, it is our view and so hold that the presentation in evidence of the marine insurance policy is not indispensable in this case before the insurer may recover from the common carrier the insured value of the lost cargo in the exercise of its subrogatory right. The subrogation receipt, by itself, is sufficient to establish not only the relationship of herein private respondent as insurer and Caltex, as the assured shipper of the lost cargo of industrial fuel oil, but also the amount paid to settle the insurance claim. The right of subrogation accrues simply upon payment by the insurance company of the insurance claim.

The presentation of the insurance policy was necessary in the case of *Home Insurance Corporation v. CA* (a case cited by petitioner) because the shipment therein (hydraulic engines) passed through several stages with different parties involved in each stage. First, from the shipper to the port of departure; second, from the port of departure to the M/S *Oriental Statesman*; third, from the M/S *Oriental Statesman* to the M/S *Pacific Conveyor*; fourth, from the M/S *Pacific Conveyor* to the port of arrival; fifth, from the port of arrival to the arrastre operator; sixth, from the arrastre operator to the hauler, *Mabuhay Brokerage Co., Inc.* (private respondent therein); and lastly, from the hauler to the consignee. We emphasized in that case that in the absence of proof of stipulations to the contrary, the hauler can be liable only for any damage that occurred from the time it received the cargo until it finally delivered it to the consignee. Ordinarily, it cannot be held responsible for the handling of the cargo before it actually received it. The insurance contract, which was not presented in evidence in that case would have indicated the scope of the insurer's liability, if any, since no evidence was adduced indicating at what stage in the handling process the damage to the cargo was sustained. [57] (Emphasis supplied.)

In *International Container Terminal Services, Inc. v. FGU Insurance Corporation*, [58] we used the same line of

reasoning in upholding the Decision of the CA finding the arrastre contractor liable for the lost shipment despite the failure of the insurance company to offer in evidence the insurance contract or policy. We explained:

Indeed, jurisprudence has it that the marine insurance policy needs to be presented in evidence before the trial court or even belatedly before the appellate court. In *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*, the Court stated that the presentation of the marine insurance policy was necessary, as the issues raised therein arose from the very existence of an insurance contract between Malayan Insurance and its consignee, ABB Koppel, even prior to the loss of the shipment. In *Wallem Philippines Shipping, Inc. v. Prudential Guarantee and Assurance, Inc.*, the Court ruled that the insurance contract must be presented in evidence in order to determine the extent of the coverage. This was also the ruling of the Court in *Home Insurance Corporation v. Court of Appeals*.

However, as in every general rule, there are admitted exceptions. In *Delsan Transport Lines, Inc. v. Court of Appeals*, the Court stated that the presentation of the insurance policy was not fatal because the loss of the cargo undoubtedly occurred while on board the petitioner's vessel, unlike in *Home Insurance* in which the cargo passed through several stages with different parties and it could not be determined when the damage to the cargo occurred, such that the insurer should be liable for it.

As in *Delsan*, there is no doubt that the loss of the cargo in the present case occurred while in petitioner's custody. Moreover, there is no issue as regards the provisions of Marine Open Policy No. MOP-12763, such that the presentation of the contract itself is necessary for perusal, not to mention that its existence was already admitted by petitioner in open court. And even though it was not offered in evidence, it still can be considered by the court as long as they have been properly identified by testimony duly recorded and they have themselves been incorporated in the records of the case.[59]

Similarly, in this case, the presentation of the insurance contract or policy was not necessary. Although petitioner objected to the admission of the Subrogation Receipt in its Comment to respondent's formal offer of evidence on the ground that respondent failed to present the insurance contract or policy,[60] a perusal of petitioner's Answer[61] and Pre-Trial Brief[62] shows that petitioner never questioned respondent's right to subrogation, nor did it dispute the coverage of the insurance contract or policy. Since there was no issue regarding the validity of the insurance contract or policy, or any provision thereof, respondent had no reason to present the insurance contract or policy as evidence during the trial.

Factual findings of the CA, affirming the RTC, are conclusive and binding

Petitioner's attempt to absolve itself from liability must likewise fail.

Only questions of law are allowed in petitions for review on certiorari under Rule 45 of the Rules of Court. Thus, it is not our duty "to review, examine, and evaluate or weigh all over again the probative value of the evidence presented,"[63] especially where the findings of both the trial court and the appellate court coincide on the matter.[64] As we have often said, factual findings of the CA affirming those of the RTC are conclusive and binding, except in the following cases: "(1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the [CA] is based on misapprehension of facts; (5) when the [CA], in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the [CA] manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the [CA] are premised on the absence of evidence and are contradicted by the evidence on

record."[65] None of these are availing in the present case.

Both the RTC and the CA found the negligence of petitioner's stevedores to be the proximate cause of the damage/loss to the shipment. In disregarding the contention of petitioner that such finding is contrary to the documentary evidence, the CA had this to say:

ATI, however, contends that the finding of the trial court was contrary to the documentary evidence of record, particularly, the Turn Over Survey of Bad Order Cargoes dated November 28, 1995, which was executed prior to the turn-over of the cargo by the carrier to the arrastre operator ATI, and which showed that the shipment already contained 2,702 damaged bags.

We are not persuaded.

Contrary to ATI's assertion, witness Redentor Antonio, marine cargo surveyor of Inchcape for the vessel Jinlian I which arrived on November 21, 1995 and up to completion of discharging on November 28, 1995, testified that it was only after all the bags were unloaded from the vessel that the actual counting of bad order bags was made, thus:

x x x x

The above testimony of Redentor Antonio was corroborated by Edgar Licalde, marine cargo surveyor connected with SMS Average Surveyors and Adjusters, Inc., the company requested by consignee Chemphil Albright and Wilson Corporation to provide superintendence, report the condition and determine the final outturn of quantity/weight of the subject shipment. x x x

x x x x

Defendant-appellant ATI, for its part, presented its claim officer as witness who testified that a survey was conducted by the shipping company and ATI before the shipment was turned over to the possession of ATI and that the Turn Over Survey of Bad Order Cargoes was prepared by ATI's Bad Order (BO) Inspector.

Considering that the shipment arrived on November 21, 1998 and the unloading operation commenced on said date and was completed on November 26, 1998, while the Turn Over Survey of Bad Order Cargoes, reflecting a figure of 2,702 damaged bags, was prepared and signed on November 28, 1998 by ATI's BO Inspector and co-signed by a representative of the shipping company, the trial court's finding that the damage to the cargoes was due to the improper handling thereof by ATI's stevedores cannot be said to be without substantial support from the records.

We thus see no cogent reason to depart from the ruling of the trial court that ATI should be made liable for the 2,702 bags of damaged shipment. Needless to state, it is hornbook doctrine that the assessment of witnesses and their testimonies is a matter best undertaken by the trial court, which had the opportunity to observe the demeanor, conduct or attitude of the witnesses. The findings of the trial court on this point are accorded great respect and will not be reversed on appeal, unless it overlooked substantial facts and circumstances which, if considered, would materially affect the result of the case.

We also find ATI liable for the additional 179 damaged bags discovered upon delivery of the shipment at the consignee's warehouse in Pasig. The final Report of Survey executed by SMS Average Surveyors & Adjusters, Inc., and independent surveyor hired by the consignee, shows that the subject shipment incurred a total of 2881 damaged bags.

The Report states that the withdrawal and delivery of the shipment took about ninety-five (95) trips from November 29, 1995 to December 28, 1995 and it was upon completion of the delivery to consignee's warehouse where the final count of 2881 damaged bags was made. The damage consisted of torn/bad order condition of the bags due to spillages and caked/hardened portions.

We agree with the trial court that the damage to the shipment was caused by the negligence of ATI's stevedores and for which ATI is liable under Articles 2180 and 2176 of the Civil Code. The proximate cause of the damage (i.e., torn bags, spillage of contents and caked/hardened portions of the contents) was the improper handling of the cargoes by ATI's stevedores, x x x

x x x x

ATI has not satisfactorily rebutted plaintiff-appellee's evidence on the negligence of ATI's stevedores in the handling and safekeeping of the cargoes. x x x

x x x x

We find no reason to disagree with the trial court's conclusion. Indeed, from the nature of the [damage] caused to the shipment, i.e., torn bags, spillage of contents and hardened or caked portions of the contents, it is not difficult to see that the damage caused was due to the negligence of ATI's stevedores who used steel hooks to retrieve the bags from the higher portions of the piles thereby piercing the bags and spilling their contents, and who piled the bags in the open storage area of ATI with insufficient cover thereby exposing them to the elements and [causing] the contents to cake or harden.[66]

Clearly, the finding of negligence on the part of petitioner's stevedores is supported by both testimonial and documentary evidence. Hence, we see no reason to disturb the same.

Judicial notice does not apply

Finally, petitioner implores us to take judicial notice of Section 7.01,[67] Article VII of the Management Contract for cargo handling services it entered with the PPA, which limits petitioner's liability to P5,000.00 per package.

Unfortunately for the petitioner, it cannot avail of judicial notice.

Sections 1 and 2 of Rule 129 of the Rules of Court provide that:

SECTION 1. Judicial notice, when mandatory. -- A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

SEC. 2. Judicial notice, when discretionary. -- A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration or ought to be known to judges because of their judicial functions.

The Management Contract entered into by petitioner and the PPA is clearly not among the matters which the courts can take judicial notice of. It cannot be considered an official act of the executive department. The PPA, which was created by virtue of Presidential Decree No. 857, as amended,[68] is a government-owned and controlled corporation in charge of administering the ports in the country.[69] Obviously, the PPA was only performing a proprietary function when it entered into a Management Contract with petitioner. As such, judicial notice cannot be applied.

WHEREFORE, the petition is hereby DENIED. The assailed July 14, 2005 Decision and the February 14, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 61798 are hereby AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

[1] Rollo, pp. 8-149, with Annexes "A" to "M" inclusive.

[2] Id. at 26-37; penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Godardo A. Jacinto and Bienvenido L. Reyes.

[3] Id. at 46-47.

[4] Id. at 27.

[5] Id.

[6] Records, p. 134.

[7] Rollo, p. 9.

[8] Records, pp. 134-135.

[9] Rollo, p. 28.

[10] Records, pp. 135-136.

[11] Id.

[12] Rollo, p. 28.

[13] Id. at 49-55.

[14] Id. at 28.

[15] Records, pp. 19-23, 24-30, and 31-35.

[16] Rollo, pp. 38-44; penned by Judge Ramon P. Makasiar.

[17] Id. at 39.

[18] Id. at 39-43.

[19] Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[20] Art. 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x x

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

x x x x

[21] Rollo, p. 43.

[22] Id. at 44.

[23] Id. at 115-136.

[24] Id. at 36.

[25] Id. at 30-34.

[26] Id. at 36.

[27] Id. at 137-148.

[28] Id. at 47.

[29] Id. at 261.

[30] Id. at 262-268.

[31] Id. at 262.

[32] Id. at 268.

[33] Id. at 270.

[34] Id. at 268-286.

[35] Id.

[36] Id. at 283-286.

[37] Id. at 290.

[38] Id.

[39] Id. at 247.

[40] Id. at 250.

[41] Art. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

[42] Rollo, p. 251-252.

[43] Id. at 253.

[44] Id. at 242-244.

[45] Id. at 241.

[46] Section 1. Filing of petition with Supreme Court. -- A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[47] Rollo, pp. 245-246.

[48] Id. at 238-240.

[49] Id. at 240-241.

[50] III. ISSUES

1. Whether x x x the defendants are liable to pay the plaintiff the amount of US\$456,000.00 representing the amount which plaintiff paid to the consignee;
2. What is the extent of the damages sustained by the subject shipment?
3. Which of the defendants is liable to plaintiff for the alleged damages and the extent of liability?
4. Is the package limitation contract applicable in the instant case?
5. Under the Carriage of Goods by Sea [Act] (COGSA), is defendant Inchcape exempted from damages by virtue of the defense like insufficient packing, the very nature of the shipment.
6. Is the defendant Inchcape liable for any damage which may have arisen after the cargo was discharged from the vessel's hold or ship's docket in the case of *Ludo v. Binamira*, 101 Phil. 120;
7. Whether x x x defendant MEC broker had something to do with the unloading of the cargo from the carrier up to the terminal;
8. Whether x x x defendant MEC had any participation in the unloading of the cargo to the warehouse or the place of the consignee;
9. Whether x x x the alleged loss or damages to the cargo occurred while the shipper was in transit or after it was unloaded from the carrier;
10. Whether x x x defendants ATI, Inchcape and MEC are entitled to any form of damages, specifically the attorney's fees. (Id. at 66-67).

[51] *Villanueva v. Court of Appeals*, 471 Phil. 394, 406 (2004).

[52] Id. at 407.

[53] Rollo, p. 121.

[54] *Cuenco v. Talisay Tourist Sports Complex, Incorporated*, G.R. No. 174154, July 30, 2009, 594 SCRA 396, 399-400.

[55] *Eastern Shipping Lines, Inc. v. Prudential Guarantee and Assurance, Inc.*, G.R. No. 174116, September 11, 2009, 599 SCRA 565, 581.

[56] 420 Phil. 824. (2001).

[57] Id. at 835-836.

[58] G.R. No. 161539, June 27, 2008, 556 SCRA 194.

[59] Id. at 203-204.

[60] Rollo, p. 208.

[61] SPECIAL AND AFFIRMATIVE DEFENSES

1. Defendant ATI, by way of Special and Affirmative Defenses, reiterates and repleads all the foregoing.
2. Plaintiff has no cause of action against defendant ATI because the latter was not negligent in the performance of its duty as an arrastre operator.
3. As evidenced by the Turn Over Survey of Bad Order Cargoes, the subject shipment arrived and was discharged unto the custody of defendant ATI in bad order condition.
4. The subject shipment was released/withdrawn from the custody of defendant ATI in exactly the same quantity and condition as when discharged from the carrying vessel. Hence, any alleged loss or damage is no longer the liability of defendant ATI.
5. Under Section 7.01 of Article VII of the Management Contract between the Philippine Port[s] Authority and defendant ATI (formerly Manila Ports Services, Inc.), the liability of the latter in case of loss, damage or non-delivery of cargoes in its custody and control shall be limited to PESOS FIVE THOUSAND ONLY (P5,000.00). (Id. at 57).

[62] IV. ISSUES

ATI submits that the issues to be resolved by this Honorable Court are the following:

1. What is the extent of the damages sustained by the subject shipment?
2. Which of the defendants is liable for the damages?
3. Assuming that ATI is liable for the damages up to how much may it be held liable? (Records, p. 42)

[63] *Puno v. Puno Enterprises, Inc.*, G.R. No. 177066, September 11, 2009, 599 SCRA 585, 590.

[64] *Dueñas v. Guce-Africa*, G.R. No. 165679, October 5, 2009, 603 SCRA 11, 20.

[65] *Id.* at 20-21.

[66] *Rollo*, pp. 30-36.

[67] Section 7.01 Responsibility and Liability for Losses and Damages; Exceptions - The Contractor shall, at its own expense, handle all merchandise in all work undertaken by it hereunder, diligently and in a skillful, workman-like and efficient manner. The Contractor shall be solely responsible as an independent contractor, and hereby agrees to accept liability and to pay to the shipping company, consignees, consignors or other interested party or parties for the loss, damage or non-delivery of cargoes in its custody and control to the extent of the actual invoice value of each package which in no case shall be more than FIVE THOUSAND PESOS (P5,000.00) each, unless the value of the cargo shipment is otherwise specified or manifested or communicated in writing together with the declared Bill of Lading value and supported by a certified packing list to the Contractor by the interested party or parties before the discharge or loading unto vessel of the goods.

x x x

[68] Revised Charter of the Philippine Ports Authority. Promulgated on December 23, 1975.

[69] SECTION 6. Corporate Powers and Duties. --

a) The corporate duties of the Authority shall be:

x x x x

(ii) To supervise, control, regulate, construct, maintain, operate, and provide such facilities or services as are necessary in the ports vested in, or belonging to the Authority.

x x x x

b) The corporate powers of the Authority shall be as follows:

x x x x

(vi) To make or enter [into] contracts of any kind or nature to enable it to discharge its functions under this Decree.

x x x x.

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