

**MARITIME AGENCIES & SERVICES, INC., PETITIONER, VS.
COURT OF APPEALS, AND UNION INSURANCE SOCIETY OF CANTON,
LTD., RESPONDENTS.**

G.R. No. 77638. July 12, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

Transcontinental Fertilizer Company of London chartered from Hongkong Island Shipping Company of Hongkong the motor vessel named "Hongkong Island" for the shipment of 8073.35 MT (gross) bagged urea from Novorossisk, Odessa, USSR, to the Philippines, the parties signing for this purpose a Uniform General Charter dated August 9, 1979.[1]

Of the total shipment, 5,400.04 MT was for the account of Atlas Fertilizer Company as consignee, 3,400.04 to be discharged in Manila and the remaining 2,000 MT in Cebu.[2] The goods were insured by the consignee with the Union Insurance Society of Canton, Ltd. for P6,779,214.00 against all risks.[3]

Maritime Agencies & Services, Inc. was appointed as the charterer's agent and Macondray Company, Inc. as the owner's agent.[4]

The vessel arrived in Manila on October 3, 1979, and unloaded part of the consignee's goods, then proceeded to Cebu on October 19, 1979, to discharge the rest of the cargo. On October 31, 1979, the consignee filed a formal claim against Maritime, copy furnished Macondray, for the amount of P87,163.54, representing C & F value of the 1,383 shortlanded bags.[5] On January 12, 1980, the consignee filed another formal claim, this time against Viva Customs Brokerage, for the amount of P36,030.23, representing the value of 574 bags of net unrecovered spillage.[6]

These claims having been rejected, the consignee then went to Union, which on demand paid the total indemnity of P113,123.86 pursuant to the insurance contract. As subrogee of the consignee, Union then filed on September 19, 1980, a complaint for reimbursement of this amount, with legal interest and attorney's fees, against Hongkong Island Company, Ltd., Maritime Agencies & Services, Inc. and/or Viva Customs Brokerage.[7] On April 20, 1981, the complaint was amended to drop Viva and implead Macondray Company, Inc. as a new defendant.[8]

On January 4, 1984, after trial, the trial court rendered judgment holding the defendants liable as follows:

(a) defendants Hongkong Island Co., Ltd., and its local agent Macondray & Co., Inc. to pay the plaintiff the sum of P87,163.54 plus 12% interest from April 20, 1981 until the whole amount is fully paid, P1,000.00 as attorney's fees and to pay one-half (1/2) of the costs; and

(b) defendant Maritime Agencies & Services, Inc., to pay the plaintiff the sum of P36,030.23, plus 12% interest from April 20, 1981 until the whole amount is fully paid, P600.00 as attorney's fees and to pay one-half (1/2) of the costs.[9]

Petitioner appealed the decision to the Court of Appeals, which rendered a decision on November 28, 1986, the dispositive portion of which reads:

WHEREFORE, the decision appealed from is modified, finding the charterer Transcontinental Fertilizer Co., Ltd. represented by its agent Maritime Agencies & Services, Inc. liable for the amount of P87,163.54 plus interest at 12% plus attorney's fees of P1,000.00. Defendant Hongkong Island Co., Ltd. represented by Macondray Co., Inc. are accordingly exempted from any liability.[10]

Maritime and Union filed separate motions for reconsideration which were both denied. The movants are now before us to question the decision of the respondent court.

In G.R. No. 77638, Maritime pleads non-liability on the ground that it was only the charterer's agent and should not answer for whatever responsibility might have attached to the principal. It also argues that the respondent court erred in applying Articles 1734 and 1735 of the Civil Code in determining the charterer's liability.

In G.R. No. 77674, Union asks for the modification of the decision of the respondent court so as to make Maritime solidarily and solely liable, its principal not having been impleaded and so not subject to the jurisdiction of our courts.

These two cases were consolidated and given due course, the parties being required to submit simultaneous memoranda. All complied, including Hongkong Island Company, Ltd., and Macondray Company, Inc., although they pointed out that they were not involved in the petitions.

There are three general categories of charters, to wit, the demise or "bareboat charter," the time charter and the voyage charter.

A demise involves the transfer of full possession and control of the vessel for the period covered by the contract, the charterer obtaining the right to use the vessel and carry whatever cargo it chooses, while manning and supplying the ship as well.[11]

A time charter is a contract to use a vessel for a particular period of time, the charterer obtaining the right to direct the movements of the vessel during the chartering period, although the owner retains possession and control.[12]

A voyage charter is a contract for the hire of a vessel for one or a series of voyages usually for the purpose of transporting goods for the charterer. The voyage charter is a contract of affreightment and is considered a private carriage.[13]

Tested by those definitions, the agreement entered into in the cases at bar should be considered. This brings us to the basic question of who, in this kind of charter, shall be liable for the cargo.

A voyage charter being a private carriage, the parties may freely contract respecting liability for damage to the goods and other matters. The basic principle is that "the responsibility for cargo loss falls on the one who agreed to perform the duty involved" in accordance with the terms of most voyage charters.[14]

This is true in the present cases where the charterer was responsible for loading, stowage and discharging at the ports visited, while the owner was responsible for the care of the cargo during the voyage. Thus, Par. 2 of the Uniform General Charter read:

2. Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by the improper or negligent stowage of the goods or by personal want of due diligence on the part of the Owners or their Manager to make the vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied or by the personal act or default of the Owners or their Manager.

And the Owners are responsible for no loss or damage or delay arising from any other cause whatsoever, even from the neglect or default of the Captain or crew or some other person employed by the Owners onboard or ashore for whose acts they would, but for this clause, be responsible, or from unseaworthiness of the vessel on loading or commencement of the voyage or at any time whatsoever.

Damage caused by contact with or leakage, smell or evaporation from other goods or by the inflammable or explosive nature or insufficient package of other goods not to be considered as caused by improper or negligent stowage, even if in fact so caused.

while Clause 17 of Additional Clauses to Charterparty provided:

The cargo shall be loaded, stowed and discharged free of expense to the vessel under the Master's supervision. However, if required at loading and discharging ports the vessel is to give free use of winches and power to drive them gear, runners and ropes. Also slings, as on board. Shore winchmen are to be employed and they are to be for Charterers' or Shippers' or Receivers' account as the case may be. Vessel is also to give free use of sufficient light, as on board, if required for night work. Time lost through breakdown of winches or derricks is not to count as laytime.

In *Home Insurance Co. v. American Steamship Agencies, Inc.*,^[15] the trial court rejected similar stipulations as contrary to public policy and, applying the provisions of the Civil Code on common carriers and of the Code of Commerce on the duties of the ship captain, held the vessel liable in damages for loss of part of the cargo it was carrying. This Court reversed, declaring as follows:

The provisions of our Civil Code on common carriers were taken from Anglo-American law. Under American jurisprudence, a common carrier undertaking to carry a special cargo or chartered to a special person only, becomes a private carrier. As a private carrier, a stipulation exempting the owner from liability for the negligence of its agent is not against public policy, and is deemed valid.

Such doctrine we find reasonable. The Civil Code provisions on common carriers should not be applied where the carrier is not acting as such but as a private carrier. The stipulation in the charter party absolving the owner from liability for loss due to the negligence of its agent would be void only if the strict public policy governing common carriers is applied. Such policy has no force where the public at large is not involved, as in the case of a ship totally chartered for the use of a single party.

Nevertheless, this ruling cannot benefit Hongkong, because there was no showing in that case that the vessel was at fault. In the cases at bar, the trial court found that 1,383 bags were shortlanded, which could only mean that they were damaged or lost on board the vessel before unloading of the shipment. It is not denied that the entire cargo shipped by the charterer in Odessa was covered by a clean bill of lading.^[16] As the bags were in good order when received in the vessel, the presumption is that they were damaged or lost during the voyage as a result of their negligent or improper stowage. For this the ship owner should be held liable.

But we do agree that the period for filing the claim is one year, in accordance with the Carriage of Goods by Sea Act. This was adopted and embodied by our legislature in Com. Act No. 65 which, as a special law, prevails over the general provisions of the Civil Code on prescription of actions. Section 3(6) of that Act provides as follows:

In any event, the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered; Provided, that if a notice of loss for damage; either apparent or concealed, is not given as provided for in this section, that fact shall not effect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

This period was applied by the Court in the case of *Union Carbide, Philippines, Inc. v. Manila Railroad Co.*,^[17]

where it was held:

Under the facts of this case, we held that the one-year period was correctly reckoned by the trial court from December 19, 1961, when, as agreed upon by the parties and as shown in the tally sheets, the cargo was discharged from the carrying vessel and delivered to the Manila Port Service. That one-year period expired on December 19, 1962. Inasmuch as the action was filed on December 21, 1962, it was barred by the statute of limitations.

The one-year period in the cases at bar should commence on October 20, 1979, when the last item was delivered to the consignee.[18] Union's complaint was filed against Hongkong on September 19, 1980, but tardily against Macondray on April 20, 1981. The consequence is that the action is considered prescribed as far as Macondray is concerned but not against its principal, which is what matters anyway.

As regards the goods damaged or lost during unloading, the charterer is liable therefor, having assumed this activity under the charter party "free of expense to the vessel." The difficulty is that Transcontinental has not been impleaded in these cases and so is beyond our jurisdiction. The liability imposable upon it cannot be borne by Maritime which, as a mere agent, is not answerable for injury caused by its principal. It is a well-settled principle that the agent shall be liable for the act or omission of the principal only if the latter is undisclosed.[19]

Union seeks to hold Maritime liable as ship agent on the basis of the ruling of this Court in the case of *Switzerland General Insurance Co., Ltd. v. Ramirez*. [20] However, we do not find that that case is applicable.

In that case, the charterer represented itself on the face of the bill of lading as the carrier. The vessel owner and the charterer did not stipulate in the Charterparty on their separate respective liabilities for the cargo. The loss/damage to the cargo was sustained while it was still on board or under the custody of the vessel. As the charterer was itself the carrier, it was made liable for the acts of the ship captain who was responsible for the cargo while under the custody of the vessel.

As for the charterer's agent, the evidence showed that it represented the vessel when it took charge of the unloading of the cargo and issued cargo receipts (or tally sheets) in its own name. Claims against the vessel for the losses/damages sustained by that cargo were also received and processed by it. As a result, the charterer's agent was also considered a ship agent and so was held to be solidarily liable with its principal.

The facts in the cases at bar are different. The charterer did not represent itself as a carrier and indeed assumed responsibility only for the unloading of the cargo, i.e., after the goods were already outside the custody of the vessel. In supervising the unloading of the cargo and issuing Daily Operations Report and Statement of Facts indicating and describing the day-to-day discharge of the cargo, Maritime acted in representation of the charterer and not of the vessel. It thus cannot be considered a ship agent. As a mere charterer's agent, it cannot be held solidarily liable with Transcontinental for the losses/damages to the cargo outside the custody of the vessel. Notably, Transcontinental was disclosed as the charterer's principal and there is no question that Maritime acted within the scope of its authority.

Hongkong and Macondray point out in their memorandum that the appealed decision is not assailed insofar as it favors them and so has become final as to them. We do not think so. First of all, we note that they were formally impleaded as respondents in G.R. No. 77674 and submitted their comment and later their memorandum, where they discussed at length their position vis-a-vis the claims of the other parties. Secondly, we reiterate the rule that even if issues are not formally and specifically raised on appeal, they may nevertheless be considered in the interest of justice for a proper decision of the case. Thus, we have held that:

Besides, an unassigned error closely related to the error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court

notwithstanding the failure to assign it as error.

At any rate, the Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary in arriving at a just decision of the case.[21]

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Issues, though not specifically raised in the pleadings in the appellate court, may, in the interest of justice, be properly considered by said court in deciding a case, if they are questions raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignore(d).[22]

x x x

While an assignment of error which is required by law or rule of court has been held essential to appellate review, and only those assigned will be considered, there are a number of cases which appear to accord to the appellate court a broad discretionary power to waive this lack of proper assignment of errors and consider errors not assigned.[23]

In his decision dated January 4, 1984, Judge Artemon de Luna of the Regional Trial Court of Manila held:

The Court, on the basis of the evidence, finds nothing to disprove the finding of the marine and cargo surveyors that of the 66,390 bags of urea fertilizer, 65,547 bags were "discharged ex-vessel" and there were "shortlanded" "1,383 bags," valued at P87,163.54. This sum should be the principal and primary liability and responsibility of the carrying vessel. Under the contract for the transportation of goods, the vessel's responsibility commence upon the actual delivery to, and receipt by the carrier or its authorized agent, until its final discharge at the port of Manila. Defendant Hongkong Island Co., Ltd., as "shipowner" and represented by the defendant Macondray & Co., Inc., as its local agent in the Philippines, should be responsible for the value of the bags of urea fertilizer which were shortlanded.

The remainder of the claim in the amount of P36,030.23, representing the value of the 574 bags of unrecovered spillages having occurred after the shipment was discharged from the vessel unto the ex-lighters as well as during the discharge from the lighters to the truck which transported the shipment to the consignee's warehouses should be for the account of the defendant Maritime Agencies & Services, Inc.

We affirm the factual findings but must modify the legal conclusions. As previously discussed, the liability of Macondray can no longer be enforced because the claim against it has prescribed; and as for Maritime, it cannot be held liable for the acts of its known principal resulting in injury to Union. The interest must also be reduced to the legal rate of 6%, conformably to our ruling in *Reformina v. Tomol*[24] and Article 2209 of the Civil Code, and should commence, not on April 20, 1981, but on September 19, 1980, date of the filing of the original complaint.

WHEREFORE, the decision of the respondent court is SET ASIDE and that of the trial court is REINSTATED as above modified. The parties shall bear their respective costs.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Original Records, pp. 24-31.

[2] *Ibid.*, pp. 65-66.

[3] Id., pp. 67-68.

[4] id., p. 33.

[5] id., p. 75.

[6] Id., p. 76.

[7] Rollo, G.R. No. 77638, p. 114.

[8] Original Records, pp. 3-6.

[9] Ibid., pp. 156-163. Decided by Judge Artemon D. Luna.

[10] Rollo, G.R. No. 77638, pp. 27-33. Penned by Coquia, J., with Luciano and Cui, JJ., concurring.

[11] Schoenbaum, Thomas, J., Admiralty and Maritime Law, 1987, Student Edition, p. 382.

[12] Ibid.

[13] Id., p. 383.

[14] Id., p. 403.

[15] 23 SCRA 24.

[16] Original Records, p. 64.

[17] 77 SCRA 359.

[18] Schoenbaum, Admiralty and Maritime Law, p. 379.

[19] 2 Am Jur., pp. 247-249; 3 CJS, pp. 119, 135.

[20] 96 SCRA 297.

[21] Vda. de Javellana v. CA, 123 SCRA 799.

[22] Baquiran v. CA, 2 SCRA 873.

[23] Hernandez v. Andal, 78 Phil. 196.

[24] 139 SCRA 260.

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