

**MONARCH INSURANCE CO., INC., TABACALERA INSURANCE CO., INC
AND HON. JUDGE AMANTE PURISIMA, PETITIONERS, VS. COURT OF
APPEALS AND ABOITIZ SHIPPING CORPORATION, RESPONDENTS.***G.R. No. 92735. June 08, 2000*

Ponente: DE LEON, JR., J.

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Before us are three consolidated petitions. G.R. No. 92735 is a petition for review filed under Rule 45 of the Rules of Court assailing the decision of the Court of Appeals dated March 29, 1990 in CA-G.R. SP. Case No. 17427 which set aside the writ of execution issued by the lower court for the full indemnification of the claims of the petitioners, Monarch Insurance Company (hereafter "Monarch") and Tabacalera Insurance Company, Incorporated (hereafter "Tabacalera") against private respondent, Aboitiz Shipping Corporation (hereafter "Aboitiz") on the ground that the latter is entitled to the benefit of the limited liability rule in maritime law; G.R. No. 94867 is a petition for certiorari under Rule 65 of the Rules of Court to annul and set aside the decision of the Court of Appeals dated August 15, 1990 in CA-G.R. SP No. 20844 which ordered the lower court to stay the execution of the judgment in favor of the petitioner, Allied Guarantee Insurance Company (hereafter "Allied") against Aboitiz insofar as it impairs the rights of the other claimants to their pro-rata share in the insurance proceeds from the sinking of the M/V P. Aboitiz, in accordance with the rule on limited liability; and G.R. No. 95578 is a petition for review under Rule 45 of the Rules of Court seeking a reversal of the decision of the Court of Appeals dated August 24, 1990 and its resolution dated October 4, 1990 in C.A. G.R. Civil Case No. 15071 which modified the judgment of the lower court by applying the hypothecary rule on limited liability to limit the lower court's award of actual damages to petitioner Equitable Insurance Corporation (hereafter "Equitable") to its pro-rata share in the insurance proceeds from the sinking of the M/V P. Aboitiz.

All cases arose from the loss of cargoes of various shippers when the M/V P. Aboitiz, a common carrier owned and operated by Aboitiz, sank on her voyage from Hong Kong to Manila on October 31, 1980. Seeking indemnification for the loss of their cargoes, the shippers, their successors-in-interest, and the cargo insurers such as the instant petitioners filed separate suits against Aboitiz before the Regional Trial Courts. The claims numbered one hundred and ten (110) for the total amount of P41,230,115.00 which is almost thrice the amount of insurance proceeds of P14,500,000.00 plus earned freight of P500,000.00 according to Aboitiz. To this day, some of these claims, including those of herein petitioners, have not yet been settled.

G.R. No. 92735.

Monarch and Tabacalera are insurance carriers of lost cargoes. They indemnified the shippers and were consequently subrogated to their rights, interests and actions against Aboitiz, the cargo carrier.[1] Because Aboitiz refused to compensate Monarch, it filed two complaints against Aboitiz, docketed as Civil Cases Nos. 82-2767 and 82-2770. For its part, Tabacalera also filed two complaints against the same defendant, docketed as Civil Cases Nos. 82-2768 and 82-2769. As these four (4) cases had common causes of action, they were consolidated

and jointly tried.[2]

In Civil Case No. 82-2767 where Monarch also named Malaysian International Shipping Corporation and Litonjua Merchant Shipping Agency as Aboitiz's co-defendants, Monarch sought recovery of P29,719.88 representing the value of three (3) pallets of glass tubing that sank with the M/V P. Aboitiz, plus attorney's fees of not less than P5,000.00, litigation expenses, interest at the legal rate on all these amounts, and cost of suit.[3] Civil Case No. 82-2770 was a complaint filed by Monarch against Aboitiz and co-defendants Compagnie Maritime des Chargeurs Reunis and F.E. Zuellig (M), Inc. for the recovery of P39,579.66 representing the value of one case of motor vehicle parts which was lost when the M/V P. Aboitiz sank on her way to Manila, plus attorney's fees of not less than P10,000.00 and cost of suit.[4]

Tabacalera sought against Franco Belgian Services, F. E. Zuellig and Aboitiz in Civil Case No. 82-2768 the recovery of P284,218.00 corresponding to the value of nine (9) cases of Renault spare parts, P213,207.00 for the value of twenty-five (25) cases of door closers and P42,254.00 representing the value of eighteen (18) cases of plastic spangle, plus attorney's fees of not less than P50,000.00 and cost of suit.[5] In Civil Case No. 82-2769, Tabacalera claimed from Hong Kong Island Shipping Co., Ltd., Citadel Lines and Aboitiz indemnification in the amount of P75,058.00 for the value of four (4) cartons of motor vehicle parts that foundered with the M/V P. Aboitiz, plus attorney's fees of not less than P20,000.00 and cost of suit.[6]

In its answer with counterclaim, Aboitiz rejected responsibility for the claims on the ground that the sinking of its cargo vessel was due to force majeure or an act of God.[7] Aboitiz was subsequently declared as in default for its failure to appear during the pre-trial. Its counsel filed a motion to set aside the order of default with notice of his withdrawal as such counsel. Before the motion could be acted upon, Judge Bienvenido Ejercito, the presiding judge of the trial court, was promoted to the then Intermediate Appellate Court. The cases were thus re-raffled to Branch VII of the RTC of Manila presided by Judge Amante P. Purisima, the co-petitioner in G.R. No. 92735. Without resolving the pending motion to set aside the order of default, the trial court set the cases for hearing. However, since Aboitiz had repeatedly failed to appear in court, the trial court denied the said motion and allowed Monarch and Tabacalera to present evidence ex-parte.[8]

Monarch and Tabacalera proffered in evidence the survey of Perfect Lambert, a surveyor commissioned to investigate the possible cause of the sinking of the cargo vessel. The survey established that on her voyage to Manila from Hong Kong, the vessel did not encounter weather so inclement that Aboitiz would be exculpated from liability for losses. In his note of protest, the master of M/V P. Aboitiz described the wind force encountered by the vessel as from ten (10) to fifteen (15) knots, a weather condition classified as typical and moderate in the South China Sea at that particular time of the year. The survey added that the seaworthiness of the vessel was in question especially because the breaches of the hull and the serious flooding of two (2) cargo holds occurred simultaneously in "seasonal weather." [9]

In due course, the trial court rendered judgment against Aboitiz but the complaint against all the other defendants was dismissed. Aboitiz was held liable for the following: (a) in Civil Case No. 82-2767, P29,719.88 with legal interest from the filing of the complaint until fully paid plus attorney's fees of P30,000.00 and cost of suit; (b) in Civil Case No. 82-2768, P539,679.00 with legal interest of 12% per annum from date of filing of the complaint until fully paid, plus attorney's fees of P30,000.00, litigation expenses and cost of suit; (c) in Civil Case No. 82-2769, P75,058.00 with legal interest of 12% per annum from date of filing of the complaint until fully paid, plus P5,000.00 attorney's fees, litigation expenses and cost of suit, and (d) in Civil Case No. 82-2770, P39,579.66 with legal interest of 12% per annum from date of filing of the complaint until fully paid, plus attorney's fees of P5,000.00, litigation expenses and cost of suit.

Aboitiz filed a motion for reconsideration of the decision and/or for new trial to lift the order of default. The court denied the motion on August 27, 1986.[10] Aboitiz appealed to the Court of Appeals but the appeal was dismissed for its failure to file appellant's brief. It subsequently filed an urgent motion for reconsideration of the dismissal with prayer for the admission of its attached appellant's brief. The appellate court denied that motion for lack of merit in a Resolution dated July 8, 1988.[11]

Aboitiz thus filed a petition for review before this Court. Docketed as G.R. No. 84158, the petition was denied in the Resolution of October 10, 1988 for being filed out of time. Aboitiz's motion for the reconsideration of said Resolution was similarly denied.[12] Entry of judgment was made in the case.[13]

Consequently, Monarch and Tabacalera moved for execution of judgment. The trial court granted the motion on April 4, 1989[14] and issued separate writs of execution. However, on April 12, 1989, Aboitiz, invoking the real and hypothecary nature of liability in maritime law, filed an urgent motion to quash the writs of execution.[15] According to Aboitiz, since its liability is limited to the value of the vessel which was insufficient to satisfy the aggregate claims of all 110 claimants, to indemnify Monarch and Tabacalera ahead of the other claimants would be prejudicial to the latter. Monarch and Tabacalera opposed the motion to quash.[16]

On April 17, 1989, before the motion to quash could be heard, the sheriff levied upon five (5) heavy equipment owned by Aboitiz for public auction sale. At said sale, Monarch was the highest bidder for one (1) unit FL-151 Fork Lift (big) and one (1) unit FL-25 Fork Lift (small). Tabacalera was also the highest bidder for one (1) unit TCH TL-251 Hyster Container Lifter, one (1) unit Hyster Top Lifter (out of order), and one (1) unit ER-353 Crane. The corresponding certificates of sale[17] were issued to Monarch and Tabacalera.

On April 18, 1989, the day before the hearing of the motion to quash, Aboitiz filed a supplement to its motion, to add the fact that an auction sale had taken place. On April 19, 1989, Judge Purisima issued an order denying the motion to quash but freezing execution proceedings for ten (10) days to give Aboitiz time to secure a restraining order from a higher court.[18] Execution was scheduled to resume to fully satisfy the judgment when the grace period shall have lapsed without such restraining order having been obtained by Aboitiz.

Aboitiz filed with the Court of Appeals a petition for certiorari and prohibition with prayer for preliminary injunction and/or temporary restraining order under CA-G.R. No. SP-17427.[19] On March 29, 1990, the appellate court rendered a Decision the dispositive portion of which reads:

"WHEREFORE, the writ of certiorari is hereby granted, annulling the subject writs of execution, auction sale, certificates of sale, and the assailed orders of respondent Judge dated April 4 and April 19, 1989 insofar as the money value of those properties of Aboitiz, levied on execution and sold at public auction, has exceeded the pro-rata shares of Monarch and Tabacalera in the insurance proceeds of Aboitiz in relation to the pro-rata shares of the 106 other claimants.

"The writ of prohibition is also granted to enjoin respondent Judge, Monarch and Tabacalera from proceeding further with execution of the judgments in question insofar as the execution would satisfy the claims of Monarch and Tabacalera in excess of their pro-rata shares and in effect reduce the balance of the proceeds for distribution to the other claimants to their prejudice.

"The question of whether or how much of the claims of Monarch and Tabacalera against the insurance proceeds has already been settled through the writ of execution and auction sale in question, being factual issues, shall be threshed out before respondent Judge.

"The writ of preliminary injunction issued in favor of Aboitiz, having served its purpose, is hereby lifted. No pronouncement as to costs.

"SO ORDERED." [20]

Hence, the instant petition for review on certiorari where petitioners Monarch, Tabacalera and Judge Purisima raise the following assignment of errors:

1. The appellate court grievously erred in re-opening the Purisima decisions, already final and executory, on the alleged ground that the issue of real and hypothecary liability had not been previously resolved by Purisima, the appellate court, and this Hon. Supreme Court;
2. The appellate court erred when it resolved that Aboitiz is entitled to the limited real and hypothecary liability of a ship owner, considering the facts on record and the law on the matter.
3. The appellate court erred when it concluded that Aboitiz does not have to present evidence to prove its entitlement to the limited real and hypothecary liability.
4. The appellate court erred in ignoring the case of "Aboitiz Shipping Corporation v. CA and Allied Guaranty Insurance Co., Inc." (G.R. No. 88159), decided by this Honorable Supreme Court as early as November 13, 1989, considering that said case, now factual and executory, is in *pari materia* with the instant case.
5. The appellate court erred in not concluding that irrespective of whether Aboitiz is entitled to limited hypothecary liability or not, there are enough funds to satisfy all the claimants.
6. The appellate court erred when it concluded that Aboitiz had made an "abandonment" as envisioned by Art. 587 of the Code of Commerce.
7. The appellate court erred when it concluded that other claimants would suffer if Tabacalera and Monarch would be fully paid.
8. The appellate court erred in concluding that certiorari was the proper remedy for Aboitiz.[21]

G.R. NOS. 94867 & 95578

Allied as insurer-subrogee of consignee Peak Plastic and Metal Products Limited, filed a complaint against Aboitiz for the recovery of P278,536.50 representing the value of 676 bags of PVC compound and 10 bags of ABS plastic lost on board the M/V P. Aboitiz, with legal interest from the date of filing of the complaint, plus attorney's fees, exemplary damages and costs.[22] Docketed as Civil Case No. 138643, the case was heard before the Regional Trial Court of Manila, Branch XXIV, presided by Judge Sergio D. Mabunay.

On the other hand, Equitable, as insurer-subrogee of consignee-assured Axel Manufacturing Corporation, filed an amended complaint against Franco Belgian Services, F.E. Zuellig, Inc. and Aboitiz for the recovery of P194,794.85 representing the value of 76 drums of synthetic organic tanning substances and 1,000 kilograms of optical bleaching agents which were also lost on board the M/V P. Aboitiz, with legal interest from the date of filing of the complaint, plus 25% attorney's fees, exemplary damages, litigation expenses and costs of suit.[23] Docketed as Civil Case No. 138396, the complaint was assigned to the Regional Trial Court of Manila, Branch VIII.

In its answer with counterclaim in the two cases, Aboitiz disclaimed responsibility for the amounts being recovered, alleging that the loss was due to a fortuitous event or an act of God. It prayed for the dismissal of the cases and the payment of attorney's fees, litigation expenses plus costs of suit. It similarly relied on the defenses of force majeure, seaworthiness of the vessel and exercise of due diligence in the carriage of goods as regards the cross-claim of its co-defendants.[24]

In support of its position, Aboitiz presented the testimonies of Capt. Gerry N. Racines, master mariner of the M/V P. Aboitiz, and Justo C. Iglesias, a meteorologist of the Philippine Atmospheric Geophysical and Astronomical Services Administration (PAGASA). The gist of the testimony of Capt. Racines in the two cases follows:

The M/V P. Aboitiz left Hong Kong for Manila at about 7:30 in the evening of October 29, 1980 after securing a departure clearance from the Hong Kong Port Authority. The departure was delayed for two hours because he (Capt. Racines) was observing the direction of the storm that crossed the Bicol Region. He proceeded with the voyage only after being informed that the storm had abated. At about 8:00 o'clock in the morning of October 30, 1980, after more than twelve (12) hours of navigation, the vessel suddenly encountered rough seas with waves about fifteen to twenty-five feet high. He ordered his chief engineer to check the cargo holds. The latter found that sea water had entered cargo hold Nos. 1 and 2. He immediately directed that water be pumped out by means of the vessel's bilge pump, a device capable of ejecting 180 gallons of water per minute. They were initially successful in pumping out the water.

At 6:00 a.m. of October 31, 1980, however, Capt. Racines received a report from his chief engineer that the water level in the cargo holds was rapidly rising. He altered the vessel's course and veered towards the northern tip of Luzon to prevent the vessel from being continuously pummeled by the waves. Despite diligent efforts of the officers and crew, however, the vessel, which was approximately 250 miles away from the eye of the storm, began to list on starboard side at 27 degrees. Capt. Racines and his crew were not able to make as much headway as they wanted because by 12:00 noon of the same day, the cargo holds were already flooded with sea water that rose from three to twelve feet, disabling the bilge pump from containing the water.

The M/V P. Aboitiz sank at about 7:00 p.m. of October 31, 1980 at latitude 18 degrees North, longitude 170 degrees East in the South China Sea in between Hong Kong, the Philippines and Taiwan with the nearest land being the northern tip of Luzon, around 270 miles from Cape Bojeador, Bangui, Ilocos Norte. Responding to the captain's distress call, the M/V Kapuas (Capuas) manned by Capt. Virgilio Gonzales rescued the officers and crew of the ill-fated M/V P. Aboitiz and brought them to Waileen, Taiwan where Capt. Racines lodged his marine protest dated November 3, 1980.

Justo Iglesias, meteorologist of PAGASA and another witness of Aboitiz, testified in both cases that during the inclusive dates of October 28-31, 1980, a stormy weather condition prevailed within the Philippine area of responsibility, particularly along the sea route from Hong Kong to Manila, because of tropical depression "Yoning." [25] PAGASA issued weather bulletins from October 28-30, 1980 while the storm was still within Philippine territory. No domestic bulletins were issued the following day when the storm which hit Eastern Samar, Southern Quezon and Southern Tagalog provinces, had made its exit to the South China Sea through Bataan.

Allied and Equitable refuted the allegation that the M/V P. Aboitiz and its cargo were lost due to force majeure, relying mainly on the marine protest filed by Capt. Racines as well as on the Beaufort Scale of Wind. In his marine protest under oath, Capt. Racines affirmed that the wind force on October 29-30, 1980 was only ten (10) to fifteen (15) knots. Under the Beaufort Scale of Wind, said wind velocity falls under scale No. 4 that describes the sea condition as "moderate breeze," and "small waves becoming longer, fairly frequent white horses." [26]

To fortify its position, Equitable presented Rogelio T. Barboza who testified that as claims supervisor and processor of Equitable, he recommended payment to Axel Manufacturing Corporation as evidenced by the cash voucher, return check and subrogation receipt. Barboza also presented a letter of demand to Aboitiz which, however, the latter ignored. [27]

On April 24, 1984, the trial court rendered a decision that disposed of Civil Case No. 138643 as follows:

"WHEREFORE, judgment is hereby rendered ordering defendant Aboitiz Shipping Company to pay plaintiff Allied Guarantee Insurance Company, Inc. the sum of P278,536.50, with legal interest thereon from March 10, 1981, then date of the filing of the complaint, until fully paid, plus P30,000.00 as attorney's fees, with costs of

suit.

"SO ORDERED." [28]

A similar decision was arrived at in Civil Case No. 138396, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, this Court hereby renders judgment in favor of plaintiff and against defendant Aboitiz Shipping Corporation, to pay the sum of P194, 794. 85 with legal rate of interest thereon from February 27, 1981 until fully paid; attorney's fees of twenty-five (25%) percent of the total claim, plus litigation expenses and costs of litigation.

SO ORDERED." [29]

In Civil Case No. 138643, Aboitiz appealed to the Court of Appeals under CA-G.R. CV No. 04121. On March 23, 1987, the Court of Appeals affirmed the decision of the lower court. A motion for reconsideration of the said decision was likewise denied by the Court of Appeals on May 3, 1989. Aggrieved, Aboitiz then filed a petition for review with this Court docketed as G.R. No. 88159 which was denied for lack merit. Entry of judgment was made and the lower court's decision in Civil Case No. 138643 became final and executory. Allied prayed for the issuance of a writ of execution in the lower court which was granted by the latter on April 4, 1990. To stay the execution of the judgment of the lower court, Aboitiz filed a petition for certiorari and prohibition with preliminary injunction with the Court of Appeals docketed as CA-G.R. SP No. 20844. [30] On August 15, 1990, the Court of Appeals rendered the assailed decision, the dispositive portion of which reads as follows:

"WHEREFORE, the challenged order of the respondent Judge dated April 4, 1990 granting the execution is hereby set aside. The respondent Judge is further ordered to stay the execution of the judgment insofar as it impairs the rights of the 100 other claimants to the insurance proceeds including the rights of the petitioner to pay more than the value of the vessel or the insurance proceeds and to desist from executing the judgment insofar as it prejudices the pro-rata share of all claimants to the insurance proceeds. No pronouncement as to costs.

"SO ORDERED." [31]

Hence, Allied filed the instant petition for certiorari, mandamus and injunction with preliminary injunction and/or restraining order before this Court alleging the following assignment of errors:

1. Respondent Court of Appeals gravely erred in staying the immediate execution of the judgment of the lower court as it has no authority nor jurisdiction to directly or indirectly alter, modify, amend, reverse or invalidate a final judgment as affirmed by the Honorable Supreme Court in G.R. No. 88159.
2. Respondent Court of Appeals with grave abuse of discretion amounting to lack or excess of jurisdiction, brushed aside the doctrine in G.R. No. 88159 which is now the law of the case and observance of time honored principles of stare decisis, res adjudicata and estoppel by judgment.
3. Real and hypothecary rule under Articles 587, 590 and 837 of the Code of Commerce which is the basis of the questioned decision (Annex "C" hereof) is without application in the face of the facts found by the lower court, sustained by the Court of Appeals in CA-G.R. No. 04121 and affirmed in toto by the Supreme Court in G.R. No. 88159.
4. Certiorari as a special remedy is unavailing for private respondent as there was no grave abuse of discretion nor lack or excess of jurisdiction for Judge Mabunay to issue the order of April 4, 1990 which was in accord with law and jurisprudence, nor were there intervening facts and/or supervening events that will justify respondent court to issue a writ of certiorari or a restraining order on a final and executory judgment of the Honorable Supreme Court. [32]

From the decision of the trial court in Civil Case No. 138396 that favored Equitable, Aboitiz likewise appealed to the Court of Appeals through CA-G.R. CV No. 15071. On August 24, 1990, the Court of Appeals rendered the Decision quoting extensively its Decision in CA-G.R. No. SP-17427 (now G.R. No. 92735) and disposing of the appeal as follows:

"WHEREFORE, we hereby affirm the trial court's awards of actual damages, attorney's fees and litigation expenses, with the exception of legal interest, in favor of plaintiff-appellee Equitable Insurance Corporation as subrogee of the consignee for the loss of its shipment aboard the M/V 'P. Aboitiz' and against defendant-appellant Aboitiz Shipping Corporation. However, the amount and payment of those awards shall be subject to a determination of the pro-rata share of said appellee in relation to the pro-rata shares of the 109 other claimants, which determination shall be made by the trial court. This case is therefore hereby ordered remanded to the trial court which shall reopen the case and receive evidence to determine appellee's pro-rata share as aforesaid. No pronouncement as to costs.

"SO ORDERED." [33]

On September 12, 1990, Equitable moved to reconsider the Court of Appeals' Decision. The Court of Appeals denied the motion for reconsideration on October 4, 1990. [34] Consequently, Equitable filed with this Court a petition for review alleging the following assignment of errors:

1. Respondent Court of Appeals, with grave abuse of discretion amounting to lack or excess of jurisdiction, erroneously brushed aside the doctrine in G.R. No. 88159 which is now the law of the case as held in G.R. No. 89757 involving the same and identical set of facts and cause of action relative to the sinking of the M/V 'P. Aboitiz' and observance of the time honored principles of stare decisis, and estoppel by judgment.
2. Real and hypothecary rule under Articles 587, 590 and 837 of the Code of Commerce which is the basis of the assailed decision and resolution is without application in the face of the facts found by the trial court which conforms to the conclusion and finding of facts arrived at in a similar and identical case involving the same incident and parties similarly situated in G.R. No. 88159 already declared as the 'law of the case' in a subsequent decision of this Honorable Court in G.R. No. 89757 promulgated on August 6, 1990.
3. Respondent Court of Appeals gravely erred in concluding that limited liability rule applies in case of loss of cargoes when the law itself does not distinguish; fault of the shipowner or privity thereto constitutes one of the exceptions to the application of limited liability under Article 587, 590 and 837 of the Code of Commerce, Civil Code provisions on common carriers for breach of contract of carriage prevails. [35]

These three petitions in G.R. Nos. 92735, 94867 and 95578 were consolidated in the Resolution of August 5, 1991 on the ground that the petitioners "have identical causes of action against the same respondent and similar reliefs are prayed for." [36]

The threshold issue in these consolidated petitions is the applicability of the limited liability rule in maritime law in favor of Aboitiz in order to stay the execution of the judgments for full indemnification of the losses suffered by the petitioners as a result of the sinking of the M/V P. Aboitiz. Before we can address this issue, however, there are procedural matters that need to be threshed out.

First. At the outset, the Court takes note of the fact that in G.R. No. 92735, Judge Amante Purisima, whose decision in the Regional Trial Court is sought to be upheld, is named as a co-petitioner. In *Calderon v. Solicitor General*, [37] where the petitioner in the special civil action of certiorari and mandamus was also the judge whose order was being assailed, the Court held that said judge had no standing to file the petition because he was merely a nominal or formal party-respondent under Section 5 of Rule 65 of the Rules of Court. He should not appear as a party seeking the reversal of a decision that is unfavorable to the action taken by him. The Court there said:

"Judge Calderon should be reminded of the well-known doctrine that a judge should detach himself from cases where his decision is appealed to a higher court for review. The *raison d'être* for such doctrine is the fact that a judge is not an active combatant in such proceeding and must leave the opposing parties to contend their individual positions and for the appellate court to decide the issues without his active participation. By filing this case, petitioner in a way ceased to be judicial and has become adversarial instead." [38]

While the petition in G.R. No. 92735 does not expressly show whether or not Judge Purisima himself is personally interested in the disposition of this petition or he was just inadvertently named as petitioner by the real parties in interest, the fact that Judge Purisima is named as petitioner has not escaped this Court's notice. Judges and litigants should be reminded of the basic rule that courts or individual judges are not supposed to be interested "combatants" in any litigation they resolve.

Second. The petitioners contend that the inapplicability of the limited liability rule to Aboitiz has already been decided on by no less than this Court in G.R. No. 88159 as early as November 13, 1989 which was subsequently declared as "law of the case" in G.R. No. 89757 on August 6, 1990. Herein petitioners cite the aforementioned cases in support of their theory that the limited liability rule based on the real and hypothecary nature of maritime law has no application in the cases at bar.

The existence of what petitioners insist is already the "law of the case" on the matter of limited liability is at best illusory. Petitioners are either deliberately misleading this Court or profoundly confused. As elucidated in the case of *Aboitiz Shipping Corporation vs. General Accident Fire and Life Assurance Corporation*, [39]

"An examination of the November 13, 1989 Resolution in G.R. No. 88159 (pp. 280-282, Rollo) shows that the same settles two principal matters, first of which is that the doctrine of primary administrative jurisdiction is not applicable therein; and second is that a limitation of liability in said case would render inefficacious the extraordinary diligence required by law of common carriers.

"It should be pointed out, however, that the limited liability discussed in said case is not the same one now in issue at bar, but an altogether different aspect. The limited liability settled in G.R. No. 88159 is that which attaches to cargo by virtue of stipulations in the Bill of Lading, popularly known as package limitation clauses, which in that case was contained in Section 8 of the Bill of Lading and which limited the carrier's liability to US\$500.00 for the cargo whose value was therein sought to be recovered. Said resolution did not tackle the matter of the Limited Liability Rule arising out of the real and hypothecary nature of maritime law, which was not raised therein, and which is the principal bone of contention in this case. While the matters threshed out in G.R. No. 88159, particularly those dealing with the issues on primary administrative jurisdiction and the package liability limitation provided in the Bill of Lading are now settled and should no longer be touched, the instant case raises a completely different issue." [40]

Third. Petitioners asseverate that the judgments of the lower courts, already final and executory, cannot be directly or indirectly altered, modified, amended, reversed or invalidated.

The rule that once a decision becomes final and executory, it is the ministerial duty of the court to order its execution, is not an absolute one. We have allowed the suspension of execution in cases of special and exceptional nature when it becomes imperative in the higher interest of justice. [41] The unjust and inequitable effects upon various other claimants against Aboitiz should we allow the execution of judgments for the full indemnification of petitioners' claims impel us to uphold the stay of execution as ordered by the respondent Court of Appeals. We reiterate our pronouncement in *Aboitiz Shipping Corporation vs. General Accident Fire and Life Assurance Corporation* on this very same issue.

"This brings us to the primary question herein which is whether or not respondent court erred in granting execution of the full judgment award in Civil Case No. 14425 (G.R. No. 89757), thus effectively denying the

application of the limited liability enunciated under the appropriate articles of the Code of Commerce. x x x. Collaterally, determination of the question of whether execution of judgments which have become final and executory may be stayed is also an issue.

"We shall tackle the latter issue first. This Court has always been consistent in its stand that the very purpose for its existence is to see the accomplishment of the ends of justice. Consistent with this view, a number of decisions have originated herefrom, the tenor of which is that no procedural consideration is sacrosanct if such shall result in the subverting of justice. The right to execution after finality of a decision is certainly no exception to this. Thus, in *Cabrias v. Adil* (135 SCRA 355 [1985]), this Court ruled that:

`xxx xxx xxx

`x x x every court having jurisdiction to render a particular judgment has inherent power to enforce it, and to exercise equitable control over such enforcement. The court has authority to inquire whether its judgment has been executed, and will remove obstructions to the enforcement thereof. Such authority extends not only to such orders and such writs as may be necessary to prevent an improper enforcement of the judgment. If a judgment is sought to be perverted and made a medium of consummating a wrong the court on proper application can prevent it." [42]

Fourth. Petitioners in G.R. No. 92735 aver that it was error for the respondent Court of Appeals to allow Aboitiz the benefit of the limited liability rule despite its failure to present evidence to prove its entitlement thereto in the court below. Petitioners Monarch and Tabacalera remind this Court that from the inception of G.R. No. 92735 in the lower court and all the way to the Supreme Court, Aboitiz had not presented an iota of evidence to exculpate itself from the charge of negligence for the simple reason that it was declared as in default.[43]

It is true that for having been declared in default, Aboitiz was precluded from presenting evidence to prove its defenses in the court a quo. We cannot, however, agree with petitioners that this circumstance prevents the respondent Court of Appeals from taking cognizance of Aboitiz' defenses on appeal.

It should be noted that Aboitiz was declared as in default not for its failure to file an answer but for its absence during pre-trial and the trial proper. In Aboitiz' answer with counterclaim, it claimed that the sinking of the M/V P. Aboitiz was due to an act of God or unforeseen event and that the said ship had been seaworthy and fit for the voyage. Aboitiz also alleged that it exercised the due diligence required by law, and that considering the real and hypothecary nature of maritime trade, the sinking justified the extinguishment of its liability for the lost shipment.[44]

A judgment of default does not imply a waiver of rights except that of being heard and presenting evidence in defendant's favor. It does not imply admission by the defendant of the facts and causes of action of the plaintiff, because the codal section[45] requires the latter to adduce evidence in support of his allegations as an indispensable condition before final judgment could be given in his favor. Nor could it be interpreted as an admission by the defendant that the plaintiff's causes of action find support in the law or that the latter is entitled to the relief prayed for.[46] This is especially true with respect to a defendant who had filed his answer but had been subsequently declared in default for failing to appear at the trial since he has had an opportunity to traverse, via his answer, the material averments contained in the complaint. Such defendant has a better standing than a defendant who has neither answered nor appeared at trial.[47] The former should be allowed to reiterate all affirmative defenses pleaded in his answer before the Court of Appeals. Likewise, the Court of Appeals may review the correctness of the evaluation of the plaintiff's evidence by the lower court.

It should also be pointed out that Aboitiz is not raising the issue of its entitlement to the limited liability rule for the first time on appeal thus, the respondent Court of Appeals may properly rule on the same.

However, whether or not the respondent Court of Appeals erred in finding, upon review, that Aboitiz is entitled to

the benefit of the limited liability rule is an altogether different matter which shall be discussed below.

Rule on Limited Liability. The petitioners assert in common that the vessel M/V P. Aboitiz did not sink by reason of force majeure but because of its unseaworthiness and the concurrent fault and/or negligence of Aboitiz, the captain and its crew, thereby barring Aboitiz from availing of the benefit of the limited liability rule.

The principle of limited liability is enunciated in the following provisions of the Code of Commerce:

Art. 587. The shipagent 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 goods which he loaded on the vessel; but he may exempt himself therefrom by abandoning the vessel with all the equipments and the freight it may have earned during the voyage.

Art. 590. The co-owners of a 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 his 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 the freightage served during the voyage.

Article 837 applies the principle of limited liability in cases of collision, hence, Arts. 587 and 590 embody the universal principle of limited liability in all cases. In *Yangco v. Laserna*,^[48] this Court elucidated on the import of Art. 587 as follows:

"The provision accords a shipowner or agent the right of abandonment; and by necessary implication, his liability is confined to that which he is entitled as of right to abandon-`the vessel with all her equipments and the freight it may have earned during the voyage.' It is true that the article appears to deal only with the limited liability of the shipowners or agents for damages arising from the misconduct of the captain in the care of the goods which the vessel carries, but this is a mere deficiency of language and in no way indicates the true extent of such liability. The consensus of authorities is to the effect that notwithstanding the language of the aforequoted provision, the benefit of limited liability therein provided for, applies in all cases wherein the shipowner or agent may properly be held liable for the negligent or illicit acts of the captain."^[49]

"No vessel, no liability," expresses in a nutshell the limited liability rule. The shipowner's or agent's liability is merely co-extensive 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.^[50] 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.^[51]

Contrary to the petitioners' theory that the limited liability rule has been rendered obsolete by the advances in modern technology which considerably lessen the risks involved in maritime trade, this Court continues to apply the said rule in appropriate cases. This is not to say, however, that the limited liability rule is without exceptions, namely: (1) where the injury or death to a passenger is due either to the fault of the shipowner, or to the concurring negligence of the shipowner and the captain;^[52] (2) where the vessel is insured; and (3) in workmen's compensation claims.^[53]

We have categorically stated that Article 587 speaks only of situations where the fault or negligence is committed

solely by the captain. In cases where the ship owner is likewise to be blamed, Article 587 does not apply. Such a situation will be covered by the provisions of the Civil Code on common carriers.[54]

A finding that a fortuitous event was the sole cause of the loss of the M/V P. Aboitiz would absolve Aboitiz from any and all liability pursuant to Article 1734(1) of the Civil Code which provides in part that common carriers are responsible for the loss, destruction, or deterioration of the goods they carry, unless the same is due to flood, storm, earthquake, lightning, or other natural disaster or calamity. On the other hand, a finding that the M/V P. Aboitiz sank by reason of fault and/or negligence of Aboitiz, the ship captain and crew of the M/V P. Aboitiz would render inapplicable the rule on limited liability. These issues are therefore ultimately questions of fact which have been subject of conflicting determinations by the trial courts, the Court of Appeals and even this Court.

In Civil Cases Nos. 82-2767-82-2770 (now G.R. No. 92735), after receiving Monarch's and Tabacalera's evidence, the trial court found that the complete loss of the shipment on board the M/V P. Aboitiz when it sank was neither due to a fortuitous event nor a storm or natural cause. For Aboitiz' failure to present controverting evidence, the trial court also upheld petitioners' allegation that the M/V P. Aboitiz was unseaworthy.[55] However, on appeal, respondent Court of Appeals exculpated Aboitiz from fault or negligence and ruled that:

"x x x, even if she (M/V P. Aboitiz) was found to be unseaworthy, this fault (distinguished from civil liability) cannot be laid on the shipowner's door. Such fault was directly attributable to the captain. This is so, because under Art. 612 of the Code of Commerce, among the inherent duties of a captain, are to examine the vessel before sailing and to comply with the laws on navigation."[56];

and that:

"x x x although the shipowner may be held civilly liable for the captain's fault x x x having abandoned the vessel in question, even if the vessel was unseaworthy due to the captain's fault, Aboitiz is still entitled to the benefit under the rule of limited liability accorded to shipowners by the Code of Commerce."[57]

Civil Case No. 138396 (now G.R. No. 95578) was similarly resolved by the trial court, which found that the sinking of the M/V P. Aboitiz was not due to an act of God or force majeure. It added that the evidence presented by the petitioner Equitable demonstrated the negligence of Aboitiz Shipping Corporation in the management and operation of its vessel M/V P. Aboitiz.[58]

However, Aboitiz' appeal was favorably acted upon by the respondent Court of Appeals which reiterated its ruling in G.R. No. 92735 that the unseaworthiness of the M/V P. Aboitiz was not a fault directly attributable to Aboitiz but to the captain, and that Aboitiz is entitled to the benefit of the limited liability rule for having abandoned its ship.[59]

Finally, in Civil Case No. 138643 (now G.R. No. 94867), the trial court held that the M/V P. Aboitiz was not lost due to a fortuitous event or force majeure, and that Aboitiz had failed to satisfactorily establish that it had observed extraordinary diligence in the vigilance over the goods transported by it.[60]

In CA-G.R. CV No. 04121, the Court of Appeals initially ruled against Aboitiz and found that the sinking of the vessel was due to its unseaworthiness and the failure of its crew and master to exercise extraordinary diligence.[61] Subsequently, however, Aboitiz' petition before the Court of Appeals, docketed as CA-G.R. SP No. 20844 (now G.R. No. 94867) to annul and set aside the order of execution issued by the lower court was resolved in favor of Aboitiz. The Court of Appeals brushed aside the issue of Aboitiz' negligence and/or fault and proceeded to allow the application of the limited liability rule "to accomplish the aims of justice." [62] It elaborated thus: "To execute the judgment in this case would prejudice the substantial right of other claimants

who have filed suits to claim their cargoes that was lost in the vessel that sank and also against the petitioner to be ordered to pay more than what the law requires." [63]

It should be pointed out that the issue of whether or not the M/V P. Aboitiz sank by reason of force majeure is not a novel one for that question has already been the subject of conflicting pronouncements by the Supreme Court. In *Aboitiz Shipping Corporation v. Court of Appeals*, [64] this Court approved the findings of the trial court and the appellate court that the sinking of the M/V P. Aboitiz was not due to the waves caused by tropical storm "Yoning" but due to the fault and negligence of Aboitiz, its master and crew. [65] On the other hand, in the later case of *Country Bankers Insurance Corporation v. Court of Appeals*, [66] this Court issued a Resolution on August 28, 1991 denying the petition for review on the ground that the Court of Appeals committed no reversible error, thereby affirming and adopting as its own, the findings of the Court of Appeals that force majeure had caused the M/V P. Aboitiz to founder.

In view of these conflicting pronouncements, we find that now is the opportune time to settle once and for all the issue of whether or not force majeure had indeed caused the M/V P. Aboitiz to sink. After reviewing the records of the instant cases, we categorically state that by the facts on record, the M/V P. Aboitiz did not go under water because of the storm "Yoning."

It is true that as testified by Justo Iglesias, meteorologist of Pag-Asa, during the inclusive dates of October 28-31, 1980, a stormy weather condition prevailed within the Philippine area of responsibility, particularly along the sea route from Hong Kong to Manila, because of tropical depression "Yoning". [67] But even Aboitiz' own evidence in the form of the marine protest filed by Captain Racines affirmed that the wind force when the M/V P. Aboitiz foundered on October 31, 1980 was only ten (10) to fifteen (15) knots which, under the Beaufort Scale of Wind, falls within scale No. 4 that describes the wind velocity as "moderate breeze," and characterizes the waves as "small x x x becoming longer, fairly frequent white horses." [68] Captain Racines also testified in open court that the ill-fated M/V P. Aboitiz was two hundred (200) miles away from storm "Yoning" when it sank. [69]

The issue of negligence on the part of Aboitiz, and the captain and crew of the M/V P. Aboitiz has also been subject of conflicting rulings by this Court. In G.R. No. 100373, *Country Bankers Insurance Corporation v. Court of Appeals*, this Court found no error in the findings of the Court of Appeals that the M/V P. Aboitiz sank by reason of force majeure, and that there was no negligence on the part of its officers and crew. In direct contradiction is this Court's categorical declaration in *Aboitiz Shipping Corporation v. Court of Appeals*, [70] to wit:

"The trial court and the appellate court found that the sinking of the M/V P. Aboitiz was not due to the waves caused by tropical storm "Yoning" but due to the fault and negligence of petitioner, its master and crew. The court reproduces with approval said findings x x x." [71]

However, in the subsequent case of *Aboitiz Shipping Corporation v. General Accident Fire and Life Assurance Corporation, Ltd.*, [72] this Court exculpated Aboitiz from fault and/or negligence while holding that the unseaworthiness of the M/V P. Aboitiz was only attributable to the negligence of its captain and crew. Thus,

"On this point, it should be stressed that unseaworthiness is not a fault that can be laid squarely on petitioner's lap, absent a factual basis for such conclusion. The unseaworthiness found in some cases where the same has been ruled to exist is directly attributable to the vessel's crew and captain, more so on the part of the latter since Article 612 of the Code of Commerce provides that among the inherent duties of a captain is to examine a vessel before sailing and to comply with the laws of navigation. Such a construction would also put matters to rest relative to the decision of the Board of Marine Inquiry. While the conclusion therein exonerating the captain and crew of the vessel was not sustained for lack of basis, the finding therein contained to the effect that the vessel was seaworthy deserves merit. Despite appearances, it is not totally incompatible with the

findings of the trial court and the Court of Appeals, whose finding of "unseaworthiness" clearly did not pertain to the structural condition of the vessel which is the basis of the BMI's findings, but to the condition it was in at the time of the sinking, which condition was a result of the acts of the captain and the crew." [73]

It therefore becomes incumbent upon this Court to answer with finality the nagging question of whether or not it was the concurrent fault and/or negligence of Aboitiz and the captain and crew of the ill-fated vessel that had caused it to go under water.

Guided by our previous pronouncements and illuminated by the evidence now on record, we reiterate our findings in *Aboitiz Shipping Corporation v. General Accident Fire and Life Assurance Corporation, Ltd.* [74], that the unseaworthiness of the M/V P. Aboitiz had caused it to founder. We, however, take exception to the pronouncement therein that said unseaworthiness could not be attributed to the ship owner but only to the negligent acts of the captain and crew of the M/V P. Aboitiz. On the matter of Aboitiz' negligence, we adhere to our ruling in *Aboitiz Shipping Corporation v. Court of Appeals*, [75] that found Aboitiz, and the captain and crew of the M/V P. Aboitiz to have been concurrently negligent.

During the trial of Civil Case Nos. 82-2767-82-2770 (now G.R. No. 92735), petitioners Monarch and Tabacalera presented a survey from Perfect Lambert, a surveyor based in Hong Kong that conducted an investigation on the possible cause of the sinking of the vessel. The said survey established that the cause of the sinking of the vessel was the leakage of water into the M/V P. Aboitiz which probably started in the forward part of the No. 1 hull, although no explanation was proffered as to why the No. 2 hull was likewise flooded. Perfect Lambert surmised that the flooding was due to a leakage in the shell plating or a defect in the water tight bulk head between the Nos. 1 and 2 holds which allowed the water entering hull No.1 to pass through hull No. 2. The surveyor concluded that whatever the cause of the leakage of water into these hulls, the seaworthiness of the vessel was definitely in question because the breaches of the hulls and serious flooding of the two cargo holds occurred simultaneously in seasonal weather. [76]

We agree with the uniform finding of the lower courts that Aboitiz had failed to prove that it observed the extraordinary diligence required of it as a common carrier. We therefore reiterate our pronouncement in *Aboitiz Corporation v. Court of Appeals* [77] on the issue of Aboitiz' liability in the sinking of its vessel, to wit:

"In accordance with Article 1732 of the Civil Code, the defendant common carrier from the nature of its business and for reasons of public policy, is bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by it according to all circumstances of the case. While the goods are in the possession of the carrier, it is but fair that it exercise extraordinary diligence in protecting them from loss or damage, and if loss occurs, the law presumes that it was due to the carrier's fault or negligence; that is necessary to protect the interest of the shipper which is at the mercy of the carrier x x x. In the case at bar, the defendant failed to prove that the loss of the subject cargo was not due to its fault or negligence." [78]

The failure of Aboitiz to present sufficient evidence to exculpate itself from fault and/or negligence in the sinking of its vessel in the face of the foregoing expert testimony constrains us to hold that Aboitiz was concurrently at fault and/or negligent with the ship captain and crew of the M/V P. Aboitiz. This is in accordance with the rule that in cases involving the limited liability of shipowners, the initial burden of proof of negligence or unseaworthiness rests on the claimants. However, once the vessel owner or any party asserts the right to limit its liability, the burden of proof as to lack of privity or knowledge on its part with respect to the matter of negligence or unseaworthiness is shifted to it. [79] This burden, Aboitiz had unfortunately failed to discharge. That Aboitiz failed to discharge the burden of proving that the unseaworthiness of its vessel was not due to its fault and/or negligence should not however mean that the limited liability rule will not be applied to the present cases. The

peculiar circumstances here demand that there should be no strict adherence to procedural rules on evidence lest the just claims of shippers/insurers be frustrated. The rule on limited liability should be applied in accordance with the latest ruling in *Aboitiz Shipping Corporation v. General Accident Fire and Life Assurance Corporation, Ltd.*,^[80] promulgated on January 21, 1993, that claimants be treated as "creditors in an insolvent corporation whose assets are not enough to satisfy the totality of claims against it."^[81] To do so, the Court set out in that case the procedural guidelines:

"In the instant case, there is, therefore, a need to collate all claims preparatory to their satisfaction from the insurance proceeds on the vessel M/V P. Aboitiz and its pending freightage at the time of its loss. No claimant can be given precedence over the others by the simple expedience of having completed its action earlier than the rest. Thus, execution of judgment in earlier completed cases, even those already final and executory must be stayed pending completion of all cases occasioned by the subject sinking. Then and only then can all such claims be simultaneously settled, either completely or pro-rata should the insurance proceeds and freightage be not enough to satisfy all claims.

"x x x x x x x x.

" In fairness to the claimants, and as a matter of equity, the total proceeds of the insurance and pending freightage should now be deposited in trust. Moreover, petitioner should institute the necessary limitation and distribution action before the proper admiralty court within 15 days from finality of this decision, and thereafter deposit with it the proceeds from the insurance company and pending freightage in order to safeguard the same pending final resolution of all incidents, for final pro-rating and settlement thereof."^[82] (Underscoring supplied.)

There is no record that Aboitiz has instituted such action or that it has deposited in trust the insurance proceeds and freightage earned. The pendency of the instant cases before the Court is not a reason for Aboitiz to disregard the aforementioned order of the Court. In fact, had Aboitiz complied therewith, even these cases could have been terminated earlier. We are inclined to believe that instead of filing the suit as directed by this Court, Aboitiz tolerated the situation of several claimants waiting to get hold of its insurance proceeds, which, if correctly handled must have multiplied in amount by now. By its failure to abide by the order of this Court, it had caused more damage to the claimants over and above that which they have endured as a direct consequence of the sinking of the M/V P. Aboitiz. It was obvious that from among the many cases filed against it over the years, Aboitiz was waiting for a judgment that might prove favorable to it, in blatant violation of the basic provisions of the Civil Code on abuse of rights.

Well aware of the 110 claimants against it, Aboitiz preferred to litigate the claims singly rather than exert effort towards the consolidation of all claims. Consequently, courts have arrived at conflicting decisions while claimants waited over the years for a resolution of any of the cases that would lead to the eventual resolution of the rest. Aboitiz failed to give the claimants their due and to observe honesty and good faith in the exercise of its rights.^[83]

Aboitiz' blatant disregard of the order of this Court in *Aboitiz Shipping Corporation v. General Accident Fire and Life Assurance Corporation, Ltd.*^[84] cannot be anything but willful on its part. An act is considered willful if it is done with knowledge of its injurious effect; it is not required that the act be done purposely to produce the injury.^[85] Aboitiz is well aware that by not instituting the said suit, it caused the delay in the resolution of all claims against it. Having willfully caused loss or injury to the petitioners in a manner that is contrary to morals, good customs or public policy, Aboitiz is liable for damages to the latter.^[86]

Thus, for its contumacious act of defying the order of this Court to file the appropriate action to consolidate all claims for settlement, Aboitiz must be held liable for moral damages which may be awarded in appropriate cases

under the Chapter on human relations of the Civil Code (Articles 19 to 36).[87]

On account of Aboitiz' refusal to satisfy petitioners' claims in accordance with the directive of the Court in *Aboitiz Shipping Corporation v. General Accident Fire and Life Assurance Corporation, Ltd.*, it acted in gross and evident bad faith. Accordingly, pursuant to Article 2208 of the Civil Code,[88] petitioners should be granted attorney's fees.

WHEREFORE, the petitions in G.R. Nos. 92735, 94867, and 95578 are DENIED. The decisions of the Court of Appeals in CA-G.R. No. SP-17427 dated March 29, 1990, CA-G.R. SP No. 20844 dated August 15, 1990, and CA-G.R. CV No. 15071 dated August 24, 1990 are AFFIRMED with the MODIFICATION that respondent Aboitiz Shipping Corporation is ordered to pay each of the respective petitioners the amounts of P100,000.00 as moral damages and P50,000.00 as attorney's fees, and treble the cost of suit.

Respondent Aboitiz Shipping Corporation is further directed to comply with the Order promulgated by this Court on January 21, 1993 in *Aboitiz Shipping Corporation v. General Accident Fire and Life Assurance Corporation, Ltd.*, G.R. No. 100446, January 21, 1993, to (a) institute the necessary limitation and distribution action before the proper Regional Trial Court, acting as admiralty court, within fifteen (15) days from the finality of this decision, and (b) thereafter to deposit with the said court the insurance proceeds from the loss of the vessel, M/V P. Aboitiz, and the freightage earned in order to safeguard the same pending final resolution of all incidents relative to the final pro-rating thereof and to the settlement of all claims.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Petition in G.R. No. 92735, p. 8; Rollo, p. 18.

[2] Annex "A" of Petition in G.R. No. 92735, p. 1; Rollo, p. 96.

[3] *Id.*, pp. 3-4; Rollo, pp. 98-99.

[4] Annex "D" of Petition in G. R. No. 92735, pp. 3-4; Rollo, pp. 145-146.

[5] Annex "B" of Petition in G.R. No. 92735, pp. 3-4; Rollo, pp. 114-115.

[6] Annex "C" of Petition in G.R. No. 92735, pp.3-4; Rollo, pp. 130-131.

[7] *Supra*, see note 2, p. 5; Rollo, p. 100.

[8] *Id.*, pp. 1-3; Rollo, pp. 96-98.

[9] *Id.*, pp. 9-10; Rollo, pp. 105-106.

[10] Annex "E" of Petition in G.R. No. 92735; Rollo, p. 159.

[11] Annex "F" of Petition in G.R. No. 92735; Rollo, p. 160.

[12] Annex "G" of Petition in G.R. No. 92735; Rollo, p. 162.

[13] Annex "H" of Petition in G.R. No. 92735; Rollo, p. 163.

[14] Rollo in G.R. No. 92735, p. 215.

[15] Annex "J" of Petition in G.R. No. 92735; Rollo, p. 165.

- [16] Annex "K" of Petition in G.R. No. 92735; Rollo, p. 170.
- [17] Rollo in G.R. No. 92735, pp. 263-266.
- [18] Annex "L" of Petition in G.R. No. 92735; Rollo, p. 187.
- [19] Annex "M" of Petition in G.R. No. 92735; Rollo, p.189.
- [20] Annex "S" of Petition in G.R. No. 92735, pp. 18-19; Rollo, pp. 386-387.
- [21] Supra, see note 1, pp. 28, 35, 55, 60, 66, 71, 73, and 74; Rollo, pp. 38, 45, 65, 70, 76, 81, 83, and 84.
- [22] Annex "A-1" of Petition in G.R. No. 94867, p. 1; Rollo, p. 32.
- [23] Annex "A" of Petition in G.R. No. 95578, p. 1; Rollo, p. 26.
- [24] Id., p. 2; Rollo, p. 27.
- [25] Cited as "Uning" in Civil Case No. 138396.
- [26] Supra, see note 23, pp. 4-11, Rollo, pp. 29-36.
- [27] Id., p. 12; Rollo, P. 37.
- [28] Annex "A-1" of Petition in G.R. No. 94867, p. 5; Rollo, p. 36.
- [29] Supra, see note 23, p. 15; Rollo, p. 40.
- [30] Annex "B" of Petition in G.R. No. 94867, p. 2; Rollo, p. 40.
- [31] Id., p. 5; Rollo, p. 43.
- [32] Petition in G.R. No. 94867, pp. 6-7; Rollo, pp. 7-8.
- [33] Annex "B" of Petition in G.R. No. 95578, pp. 12-13; Rollo, pp. 52-53.
- [34] Annex "D" of Petition in G.R. No. 95578; Rollo, p. 74.
- [35] Petition in G.R. No. 95578, pp. 6-7; Rollo, pp. 7-8.
- [36] Rollo of G.R. No. 92735, p. 689.

[37] 215 SCRA 876 (1992).

- [38] Id., p. 881.

[39] 217 SCRA 359 (1993).

- [40] Id., pp. 363-364.
- [41] Lipana v. Development Bank of Rizal, 154 SCRA 257, 261 (1987); Pascual v. Tan, 85 Phil. 164, 165 (1949).
- [42] Supra, see note 39, pp. pp. 364-365.
- [43] Supra, see note 1, p. 59; Rollo, p. 69.
- [44] Supra, see note 2, p. 5; Rollo, p. 100.
- [45] Section 1, Rule 18 of the Revised Rules of Court.

Judgment by default. - If the defendant fails to answer within the time specified in these rules, the court shall, upon motion of the plaintiff and proof of such failure, declare the defendant in default. Thereupon the court shall proceed to receive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant. This provision applies where no answer is made to a counterclaim, cross-claim, or third-party complaint within the period provided in the rules.

[46] Francisco, *The Revised Rules of Court in the Philippines, Annotated and Commented*, Volume 1, 1973 ed., p. 1013.

[47] *Mangelen v. Court of Appeals*, 215 SCRA 230, 245 (1992); *Gochangco v. CFI of Negros Occidental*, 157 SCRA 40, 55 (1988).

[48] 73 Phil. 330 (1941).

[49] *Id.*, p. 332.

[50] *Chua Yek Hong v. Intermediate Appellate Court*, 166 SCRA 183, 188 (1988).

[51] Agbayani, *Commercial Laws of the Philippines*, Vol. 4, p. 216, 1993 ed. citing *Abueg v. San Diego*, 44 O. G. 80.

[52] *Philippine American General Insurance Co., Inc. v. Court of Appeals*, 273 SCRA 262, 271 (1997); *Heirs of Amparo de los Santos v. Court of Appeals*, 186 SCRA 649, 658 (1990); *Manila Steamship Co., Inc. v. Insa Abdulhaman and Lim Hong To*, 100 Phil. 32, 38-39 (1956).

[53] *Supra*, see note 50, p. 189.

[54] *Supra*, see note 52.

[55] *Supra*, see note 2, pp. 11- 12; *Rollo*, pp. 106-107.

[56] *Supra*, see note 20, p.11; *Rollo*, p. 379.

[57] *Id.*, p. 13; *Rollo* in G.R. No. 92735, p. 381.

[58] *Supra*, see note 29, p. 14; *Rollo*, p. 39.

[59] *Supra*, see note 33, p. 10; *Rollo*, p. 50.

[60] *Supra*, see note 28, p. 5; *Rollo*, p. 36.

[61] Annex "D" of Petition in G.R. No. 94867, p. 8; *Rollo*, p. 52.

[62] Annex "C" of Petition in G.R. No. 94867, p. 5; *Rollo*, p. 43.

[63] *Ibid.*

[64] 188 SCRA 387 (1990).

[65] *Id.*, p. 391.

[66] G.R. No. 100373, August 28, 1991.

[67] *Supra*, see note 2, p. 6; *Rollo*, p. 31.

[68] *Supra*, see note 28, p. 3; *Rollo*, p. 34

[69] Id., pp. 4-5.

[70] 188 SCRA 387 (1990).

[71] Id., p. 391.

[72] Supra, see note 39.

[73] Id., pp. 369-370.

[74] Supra, see note 39.

[75] Supra, see note 64.

[76] Supra, see note 2, p. 11; Rollo, p. 106.

[77] Supra, see note 64.

[78] Id., p. 393.

[79] *Coryell v. Phipps*, 317 U.S. 406 (1942); Hall, Sann, and Halajian, *Benedict on Admiralty*, Volume 3, 1979 ed., S. 41 citing *Christopher v. Grueby*, 40 F.2d 8, 1930, A.M. C. 989.

[80] Supra, see note 39.

[81] Id., p. 371.

[82] Ibid.

[83] Art. 19 of the Civil Code of the Philippines. "Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

[84] Supra, see note 39.

[85] Tolentino, *Civil Code of the Philippines*, Vol. I, 1990 ed., p. 71.

[86] Art. 21 of the Civil Code of the Philippines. "Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs, or public policy shall compensate the latter for damage."

[87] *Patricio v. Leviste*, 172 SCRA 774, 781 (1989).

[88] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs cannot be recovered, except:

(5) "x x x....x x x....x x x

Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

"x x x....x x x....x x x."

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