

JULIUS C. OUANO, PETITIONER, VS. COURT OF APPEALS, MARKET DEVELOPERS, INC., JULIAN O. CHUA, SUPREME MERCHANT CONSTRUCTION SUPPLY, INC., JOHNNY ANG, ALIAS CHUA PEK GIOK, AND FLOR...*G.R. No. 95900. July 23, 1992*

Ponente: REGALADO, J.

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This petition for review on certiorari assails the decision of the Court of Appeals in CA-G.R. CV No. 12693, promulgated on August 30, 1990, reversing the decision of the Regional Trial Court of Cebu, Branch XI, in Civil Case No. R-20037 wherein judgment had been rendered for petitioner, as well as the resolution of said respondent court, dated October 15, 1990, denying petitioner's motion for reconsideration.[1]

As found by respondent court, petitioner is the registered owner and operator of the motor vessel known as M/V Don Julio Ouano. On October 8, 1980, petitioner leased the said vessel to respondent Rafols under a charter party. The consideration for the letting and hiring of said vessel was P60,000.00 a month, with P30,000.00 as down payment and the balance of P30,000.00 to be paid within twenty (20) days after actual departure of the vessel from the port of call. It was also expressly stipulated that the charterer should operate the vessel for his own benefit and should not sublet or sub-charter the same without the knowledge and written consent of the owner.

On October 11, 1980, Rafols contracted with respondent Market Developers, Inc. (hereafter, MADE) through its group manager, respondent Julian O. Chua, under an agreement denominated as a "Fixture Note" to transport 13,000 bags of cement from Iligan City to General Santos City, consigned to respondent Supreme Merchant Construction Supply, Inc. (SMCSI, for brevity) for a freightage of P46,150.00. Said amount was agreed to be payable to Rafols by MADE in two installments, that is, P23,075.00 upon loading of the cement at Iligan City and the balance of P23,075.00 upon completion of loading and receipt of the cement cargo by the consignee. The fixture note did not have the written consent of petitioner.

Rafols had on board the M/V Don Julio Ouano his sobre cargo (jefe de viaje) when it departed from Iligan City until the cargo of cement was unloaded in General Santos City, the port of destination.

On October 13, 1980, petitioner wrote a letter to MADE through its aforesaid manager, Chua, "to strongly request, if not demand to hold momentarily any payment or partial payment whatsoever due M/V Don Julio Ouano until Mr. Florentino Rafols makes good his commitment" to petitioner.

On October 20, 1980, MADE, as shipper, paid Rafols the amount of P23,075.00 corresponding to the first installment of the freightage for the aforesaid cargo of cement.

The entire cargo was thereafter unloaded at General Santos City Port and delivered to the consignee, herein respondent SMCI, without any attempt on the part of either the captain of M/V Don Julio Ouano or the said sobre cargo of Rafols, or even of petitioner himself who was then in General Santos City Port, to hold and keep in

deposit either the whole or part of the cement cargo to answer for freightage. Neither was there any demand made on any of the respondents for a bond to secure payment of the freightage, nor to assert in any manner the maritime lien for unpaid freight over the cargo by giving notice thereof to the consignee SMCI. The cement was sold in due course of trade by SMCI to its customers in October and November, 1980.

On January 6, 1981, petitioner filed a complaint in the Regional Trial Court of Cebu against MADE, as shipper; SMC, as consignee; and Rafols, as charterer, seeking payment of P23,000.00 representing the freight charges for the cement cargo, aside from moral and exemplary damages in the sum of P150,000.00, attorney's fees and expenses of litigation.

On March 10, 1981, MADE filed its answer, while Ang and Chua filed theirs on February 10 and May 31, 1982, respectively. Rafols was declared in default for failure to file his answer despite due service of summons.

On account of the subsequent dropping and impleading of parties defendant, the complaint underwent several amendments until the case was eventually tried on the third amended complaint, which alleged three causes of action against the aforementioned respondents as answering defendants therein.

On May 25, 1985, the trial court rendered a decision in favor of petitioner, with the following disposition:

"WHEREFORE, premises considered, this Court render(s) judgment 1) under plaintiff's first cause of action, ordering defendant MADE (Market Developers, Inc.), Julian O. Chua, Supreme Merchant Construction Supply, Inc., Johnny Ang otherwise known as Chua Pek Giok and defaulted defendant Florentino Rafols, Jr., jointly and severally, to pay to plaintiff Julius C. Ouano the sum of P23,075.00 corresponding to the first 50% freight installment on plaintiff's vessel 'M/V Don Julio Ouano' included as part of the purchase price paid by defendant SMCSI to defendant MADE, plus legal interest from January 6, 1981 date of filing of the original complaint; 2) under the second cause of action, sentencing MADE (Market Developers), Julian O. Chua and Florentino Rafols, Jr., jointly and solidarily, to pay plaintiff P50,000.00 in concept of moral and exemplary damages, and P5,000.00 attorney's fees; and 3) under the third cause of action, sentencing defendant Supreme Merchant Construction Supply, Inc. and Johnny Ang alias Chua Pek Giok, jointly and severally, to pay plaintiff P200,000.00 attorney's fees and expenses of litigation, P4,000.00, including P1,000.00 incurred by plaintiff for travel to General Santos City to coordinate with the plaintiff (sic) in serving an alias summons per sheriff's return of service (Exhibit 'S'), with costs against all the defendants." [2]

On appeal, respondent Court of Appeals reversed the aforesaid decision, holding as follows:

"In the light of the foregoing, appellee Ouano has no cause of action against appellants MADE and SMCSI, but only against defendant Rafols. Their principals not being liable to appellee for the payment of the freightage in question, the agents, appellants Julian O. Chua and Johnny Ang alias Chua Pek Giok who had acted within the scope of their authority, would accordingly not be liable to appellee.

"For the same reason that the defendants-appellants are not liable to pay the appellee the freightage in question, the award of moral and exemplary damages, attorney's fees and expenses of litigation in favor of appellee has no factual and legal basis.

"WHEREFORE, premises considered, the decision appealed from is reversed and set aside with respect to the defendants-appellants who are hereby absolved from the complaint. The decision is affirmed with respect to defendant Florentino Rafols." [3]

Petitioner filed a motion for reconsideration which, as already stated, was denied by the Court of Appeals, [4] hence the present petition with the following assignment of errors:

1. The Honorable Court of Appeals erred in not holding respondents MADE and Chua liable for damages to petitioner for quasi-delict under Art. 2176, New Civil Code, let alone for inducement to violate contract under

Art. 1314 thereof.

2. The Court of Appeals erred in not holding respondents MADE and Chua liable for all damages which are the natural and probable consequences of their act or omission, the term 'all damages' being broad enough to embrace the P150,000.00 moral and exemplary damages claimed by petitioner, as well as P10,000.00 attorney's fees likewise claimed by him (Art. 2202, N.C.C.).

3. The Court of Appeals erred in not holding respondents MADE and Chua liable jointly and solidarily (Art. 2194, N.C.C.) for the foregoing damages and attorney's fee, as well as actual damages of P23,075.00 representing unpaid freight on petitioner's vessel.

4. The Court of Appeals erred in not holding that in contracts and quasi-delicts the defendants shall be liable for all damages which are the natural and probable consequences of the act or omission complained of, more so if attended with fraud, bad faith, malice or wanton attitude (Arts. 2201 and 2202, N.C.C.).

5. The Court of Appeals erred in not holding, in accord with the settled doctrine in *Overseas Factors, Inc. vs. South Sea Shipping*, 4 SCRA 401, that where freight is included in the purchase price, the carrier's lien exists if freight was not paid, hence, the continued liability of respondents MADE and Chua and respondents Supreme Merchant Construction Supply, Inc. and Chua Pek Giok.[5]

We find no merit in this petition.

Preliminarily, the thesis of petitioner that the aforestated fixture note executed by Rafols and MADE was in derogation of the prohibition against the subletting or sub-chartering of the vessel has been duly confuted by respondent court. It pointed out that Rafols did not, by entering into said contract of transportation of the cement cargo, thereby sublease the vessel. The possession, operation, and management of the vessel was not transferred to MADE but remained with Rafols as the lessee or charterer. Rafols, as such lessee, was the one who bound himself to transport, as he did transport, the cargo of cement for a fixed price.[6] On the other hand, even indulging petitioner in his argument that there was a sublease or sub-charter by reason of that one particular cargo of MADE, still no right of recovery exists in his favor against any of the private respondents, except respondent Rafols, as we shall hereunder demonstrate.

It is a basic principle in civil law that, with certain exceptions not obtaining in this case, a contract can only bind the parties who had entered into it or their successors who assumed their personalities or their juridical positions, and that, as a consequence, such contract can neither favor nor prejudice a third person.[7] It is undisputed that the charter contract was entered into only by and between petitioner and respondent Rafols, and the other private respondents were neither parties thereto nor were they aware of the provisions thereof. The aforesaid allegations of petitioner that Rafols violated the prohibition in the contract against the sublease or sub-charter of the vessel without his knowledge and written consent, even if true, does not give rise to a cause of action against the supposed sublessee or sub-charterer. The act of the charterer in sub-chartering the vessel, in spite of a categorical prohibition may be a violation of the contract, but the owner's right of recourse is against the original charterer, either for rescission or fulfillment, with the payment of damages in either case.[8]

The obligation of contracts is limited to the parties making them and, ordinarily, only those who are parties to contracts are liable for their breach. Parties to a contract cannot thereby impose any liability on one who, under its terms, is a stranger to the contract, and, in any event, in order to bind a third person contractually, an expression of assent by such person is necessary.[9]

We likewise reject the contention of petitioner that MADE and Chua should be held liable for damages for a quasi-delict under Article 2176 of the Civil Code for having failed to obtain his consent before entering into an agreement with Rafols, and under Article 1314 of the same Code for inducing Rafols to violate the charter party.

The obligation to obtain the written consent of petitioner before subleasing or sub-chartering the vessel was on Rafols and not on MADE, hence the latter cannot be held liable for the supposed non-compliance therewith.

Moreover, we cannot conceive of how MADE and Chua could be guilty of inducing Rafols to violate the original charter party. Firstly, there is no evidence on record to show that said respondents had knowledge of the prohibition imposed in the original charter party to sublease or sub-charter the vessel. Secondly, at the time the fixture note was entered into between Rafols and MADE, a written authorization signed by the wife of petitioner in his behalf, authorizing Rafols to execute contracts, negotiate for cargoes and receive freight payments,[10] was shown by the former to the latter. Although the said authorization may have been made by the wife, the same, however, can evidently be proof of good faith on the part of MADE and Chua who merely relied thereon. Thirdly, as stated in the fixture note, the agreement between Rafols and MADE was for the former to transport the cement of the latter using either the "M/V Don Julio Ouano or substitute vessel at his discretion." [11] Hence, the decision to use the M/V Don Julio Ouano in transporting the cargo of MADE was solely that of Rafols.

Also, herein petitioner is deemed to have ratified the supposed sub-charter contract entered into by MADE and Rafols when he demanded the payment of the second freight installment as provided in the agreement and, later, received the same by virtue of the decision of the Court of First Instance of Cebu in Civil Case No. R-19845, an interpleader case filed by MADE.[12]

Contrary to petitioner's contestation, the act of MADE in paying the first freight installment to Rafols is not an indication of bad faith or malice. Article 1240 of the Civil Code provides that "(p)ayment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it." Consequently, MADE, under the fixture note, was under obligation to pay the freight to Rafols.

Now, even on petitioner's theory that there was a sublease, it must be stressed that in a sublease arrangement, the basic principles of which are applicable in the present case, there are two distinct leases involved, that is, the principal lease and the sublease. There are two juridical relationships which co-exist and are intimately related to each other, but which are nonetheless distinct one from the other. In such arrangement, the personality of the lessee qua lessee does not disappear; his rights and obligations vis-a-vis the lessor are not passed on to nor acquired by the sublessee. The lessor is, in the main and except only in the instances specified in the Civil Code, a stranger to the relationship between the lessee-sublessor and the sublessee. The lessee-sublessor is not an agent of the lessor nor is the lessor an agent of the lessee-sublessor. The sublessee has no right or authority to pay the sublease rentals to the lessor, said rentals being due and payable to the lessee-sublessor.[13] MADE was, therefore, under no obligation to pay petitioner since the freightage was payable to Rafols.

Although it is provided in Article 1652 of the Civil Code that the sublessee is subsidiarily liable to the lessor for any rent due from the lessee, the sublessee shall not be responsible beyond the amount of rent due from him, in accordance with the terms of the sublease, at the time of the extrajudicial demand by the lessor. However, in the case at bar, petitioner made no demand for payment from MADE. His letter dated October 13, 1980 was only a request to hold momentarily any payment due for the use of M/V Don Julio Ouano until respondent Rafols had made good his obligations to him.

In the absence of any positive action on the part of petitioner, MADE could not withhold the payment of the freight to Rafols. As stated in the fixture note, the first freight installment was due and payable upon arrival of the assigned vessel at the port of loading. The goods were loaded in the vessel on or before October 9, 1980,[14] hence on that date the first freight installment was already due and demandable. To further withhold the payment of said installment would constitute a breach of MADE's obligation under the foregoing contract.

In addition, it is also worth noting that, as alleged in paragraph 6 of petitioner's basic complaint filed in the court

below, payments were actually made after October 13, 1980 by Rafols to petitioner, to wit: (a) two checks in the total amount of P30,000.00 dated October 13 and 21, 1980, respectively; and (b) a third postdated check for P32,000.00 issued on November 9, 1980.[15] The fact that the said checks bounced for insufficient funds cannot in any way be ascribable to MADE nor can it create or affect any liability which petitioner seeks to impute to respondents MADE, SMCSI and their agents.

Anent the issue on maritime lien on the cargo, it is the theory of petitioner that the first freight installment having remained unpaid to him as owner of M/V Don Julio Ouano, the maritime lien on the cargo subsists. The said contention is specious and untenable.

Herein petitioner, as owner of the vessel, has no lien on the cargo. A charter party may, among other classifications, be of two kinds: One is where the owner agrees to carry a cargo which the charterer agrees to provide, and the second is where there is an entire surrender by the owner of the vessel to the charterer, who hires the vessel as one hires a house, takes her empty, and provides the officers and provisions, and, in short, the entire outfit. In such a contract, the charterer is substituted in place of the owner and becomes the owner for the voyage.[16] This second type is also known as a bareboat charter or otherwise referred to as a demise of the vessel.[17]

In a charter party of the second kind, not only the entire capacity of the ship is let but the ship itself, and the possession is passed to the charterer. The entire control and management of it is given up to him. The general owner loses his lien for freight, but the lien itself is not destroyed; the charterer is substituted in his place, in whose favor the lien continues to exist when goods are taken on freight. The general owner, however, has no remedy for the charter of his vessel but his personal action on the covenants of the charter party. It is a contract in which he trusts in the personal credit of the charterer.[18]

Therefore, where the charter constitutes a demise of the ship and the charterer is the owner for the voyage, and that is the kind of charter party involved in the instant case, the general owner has no lien on the cargo for the hire of the vessel, in the absence of an express provision therefor[19] as in the case at bar.

Moreover, even on the assumption that petitioner had a lien on the cargo for unpaid freight, the same was deemed waived when the goods were unconditionally released to the consignee at the port of destination. A carrier has such a lien only while it retains possession of the goods, so that delivery of the goods to the consignee or a third person terminates, or constitutes a waiver of, the lien.[20] the lien of a carrier for the payment of freight charges is nothing more than the right to withhold the goods, and is inseparably associated with its possession and dependent upon it.[21]

The shipowner's lien for freight is not in the nature of a hypothecation which will remain a charge upon the goods after he has parted with possession, but is simply the right to retain them until the freight is paid, and is therefore lost by an unconditional delivery of the goods to the consignee.[22]

Furthermore, under Article 667 of the Code of Commerce, the period during which the lien shall subsist is twenty (20) days. Parenthetically, this has been modified by the Civil Code, Article 2241 whereof provides that credits for transportation of the goods carried, for the price of the contract and incidental expenses shall constitute a preferred claim or lien on the goods carried until their delivery and for thirty (30) days thereafter. During this period, the sale of the goods may be requested, even though there are other creditors and even if the shipper or consignee is insolvent. But, this right may not be made use of where the goods have been delivered and were turned over to a third person without malice on the part of the third person and for a valuable consideration. In the present case, the cargo of cement was unloaded from the vessel and delivered to the consignee on October 23, 1980, without any oral or written notice or demand having been made on SMCSI for unpaid freight on the cargo.

Consequently, after the lapse of thirty (30) days from the date of delivery, the cargo of cement had been released from any maritime lien for unpaid freight.

Petitioner's invocation of *Overseas Factors, Inc., et al. vs. South Sea Shipping Co., et al.*,^[23] therefore, is ineffectual and unavailing. In said case, the cargo was still in the possession of the carrier whose officers and crew refused to unload the same unless the balance of the freight was paid. In this case before us, the cargo had already been unconditionally delivered to the consignee SMCI without protest.

WHEREFORE, the petition is DENIED and the assailed judgment of respondent Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Nocon, JJ., concur.

[1] Penned by Justice Celso L. Magsino, with the concurrence of Justices Nathaniel P. de Pano, Jr. and Cezar D. Francisco.

[2] Per Judge Valeriano P. Tomol, Jr.; Rollo, 77.

[3] Rollo, 43.

[4] *Ibid.*, 45.

[5] *Ibid.*, 15.

[6] *Ibid.*, 41.

[7] See Art. 1311, Civil Code.

[8] Art. 1191, Civil Code.

[9] 17 Am. Jur. 2d, Contracts 446.

[10] Exh. D; Original Record, 486.

[11] Exh. B; *ibid.*, 22.

[12] Exh. I; *ibid.*, 493-496.

[13] *Blas vs. Court of Appeals, et al.*, 180 SCRA 60 (1989).

[14] Original Record, 491.

[15] *Ibid.*, 3.

[16] *Fish vs. Sullivan*, 3 So. 730, 732, 40 La. Ann 193.

[17] See *Litonjua Shipping Co. vs. National Seamen Board, et al.*, 176 SCRA 189 (1989); *Maritime Agencies & Services, Inc. vs. Court of Appeals, et al.*, 187 SCRA 346 (1990).

[18] *Drinkwater vs. The Spartan*, 7 Fed. Cas. 1085, 1088.

[19] *Pickman vs. Woods*, 23 Mass, 6 Pick 248.

[20] 13 Am. Jur. 2d, Carriers 965.

[21] Re Bags of Linseed (Sears vs. Wills) 1 Black (US) 108, 17 L ed 35.

[22] 70 Am. Jur. 2d, Shipping 628.

[23] 4 SCRA 400 (1962).

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