

NATIONAL FOOD AUTHORITY, ROSELINDA GERALDEZ, RAMON SARGAN AND ADELINA A. YAP, PETITIONERS, VS. THE HON. COURT OF APPEALS AND HONGFIL SHIPPING CORPORATION, RESPONDENTS.

G.R. No. 96453. August 04, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court of the Decision,[1] of the Court of Appeals which affirmed the decision of Branch 165 of the Regional Trial Court, Pasig City in Civil Case No. 55892, entitled "Hongfil Shipping Corporation vs. National Food Authority, Roselinda Geraldez, Ramon Sargan and Adelina A. Yap,"[2] ordering the National Food Authority to pay plaintiff's claim for demurrage and deadfreight.

The facts that matter are undisputed.

National Food Authority (NFA), thru its officers then, Emil Ong, Roselinda Geraldez, Ramon Sargan and Adelina A. Yap, entered into a "Letter of Agreement for Vessel /Barge Hire"[3] with Hongfil Shipping Corporation (Hongfil) for the shipment of 200,000 bags of corn grains from Cagayan de Oro City to Manila, under the following terms and conditions, to wit:

"1. Name of Vessel/Barge : MV CHARLIE/DIANE

2. Cargo : Corn grains in bag

3. Quantity

: Two Hundred Thousand bags, more or less

4. Loading Port

: One Safe Berth at Cagayan de Oro Port

5. Discharging Port

: One Safe Berth at North Harbor, Manila

6. Laydays (Loading and Unloading):

: Customary Quick Dispatch (CQD)

7. Demurrage/Dispatch : None

8. Freight Rate

: Seven Pesos 30/100 (P7.30) per bar or a total of P1,460,000.00 based on out-turn weight at 50 kilos per bag

9. Payment of Freight

: Loading - 25% upon completion of loading; 25% upon commencement of discharge and balance 15 days after presentation of complete billing documents subject to usual accounting auditing regulations and procedures."

NFA sent Hongfil a Letter of Advice that its (Hongfil) vessel should proceed to Cagayan de Oro City. On February 6, 1987, M/V DIANE/CHARLIE of Hongfil arrived in Cagayan de Oro City 1500 hours. Hongfil notified the Provincial Manager of NFA in Cagayan de Oro, Eduardo A. Mercado, of its said vessel's readiness to load and the latter received the said notification on February 9, 1987.[4]

A certification of charging rate was then issued by Gold City Integrated Port Services, Inc. (INPORT), the arrastre firm in Cagayan de Oro City, which certified that it would take them (INPORT) seven (7) days, eight (8) hours and forty-three (43) minutes[5] to load the 200,000 bags of NFA corn grains.

On February 10, 1987, loading on the vessel commenced and was terminated on March 4, 1987. As there was a strike staged by the arrastre workers and in view of the refusal of the striking stevedores to attend to their work, the loading of said corn grains took twenty-one (21) days, fifteen hours (15) and eighteen (18) minutes to finish.

On March 6, 1987, the NFA Provincial Manager allowed MV CHARLIE/DIANE to depart for the Port of Manila. On March 11, 1987, the vessel arrived at the Port of Manila and a certification of discharging rate was issued at the instance of Hongfil, stating that it would take twelve (12) days, six (6) hours and twenty-two (22) minutes to discharge the 200, 000 bags of corn grains.

Unfortunately, unloading only commenced on March 15, 1987 and was completed on April 7, 1987. It took a total period of twenty (20) days, fourteen (14) hours and thirty-three (33) minutes to finish the unloading, due to the unavailability of a berthing space for M/V CHARLIE/DIANE.

After the discharging was completed, NFA paid Hongfil the amount of P1,006,972.11 covering the shipment of corn grains. Thereafter, Hongfil sent its billing to NFA, claiming payment for freight covering the shut-out load or deadfreight as well as demurrage, allegedly sustained during the loading and unloading of subject shipment of corn grains.

When NFA refused to pay the amount reflected in the billing, Hongfil brought an action against NFA and its officers for recovery of deadfreight and demurrage, docketed as Civil Case No. 55892 before Branch 165 of the Regional Trial Court in Pasig City.

On February 29, 1989, after trial, the Regional Trial Court handed down its decision[6] in favor of Hongfil and against NFA and its officers, disposing thus:

"IN VIEW OF THE FOREGOING, the Court hereby renders judgment in favor of plaintiff and against the defendants, ordering:

- defendant National Food Authority, and the public defendants, to pay the plaintiff the following:

a) P242,367.30, in and as payment of the deadfreight or unloaded cargo; and

B) P1,152,687.50, in and as payment as of demurrage claim;

- defendants to pay plaintiff, jointly and severally the amount of P50,000.00, for and as attorney's fees; and

- Expenses of litigation or the costs of this suit.

The counterclaim of defendants are hereby dismissed for lack of merit.

SO ORDERED."

On appeal, the Court of Appeals affirmed with modification the judgment by deleting therefrom the award of attorney's fees.

Undaunted, petitioners have come to this Court via the instant petition for review under Rule 45 of the Revised Rules of Court, raising as issues:

I

WHETHER OR NOT PETITIONERS CAN BE HELD LIABLE FOR DEADFREIGHT;

II

WHETHER OR NOT PETITIONERS CAN BE HELD LIABLE FOR DEMURRAGE; AND

III

WHETHER OR NOT PERSONAL CIVIL LIABILITY MAY ATTACH TO THE OFFICERS OF NFA.

It bears stressing that subject Letter of Agreement is considered a Charter Party. A charter party is classified into (1) "bareboat" or "demise" charter and (2) contract of affreightment. Subject contract is one of affreightment, whereby the owner of the vessel leases part or all of its space to haul goods for others. It is a contract for special service to be rendered by the owner of the vessel. Under such contract the ship owner retains the possession, command and navigation of the ship, the charterer or freighter merely having use of the space in the vessel in return for his payment of the charter hire.[7]

Anent the first issue, petitioners contend that the respondent corporation is not entitled to deadfreight as the contract itself limited their liability. Section 7 of the "Letter Agreement for Vessel/Barge Hire" provided a freight rate of Seven and 30/100 (P7.30) Pesos per bag or a total of P1,460,000 based on out-turn weight of 50 kilos per bag.

The Court of Appeals, however, held that since the charter of MV CHARLIE/DIANE was for the whole vessel, and inasmuch as the vessel may no longer accept any other cargo without the consent of the charterer NFA, the latter is liable to pay the total amount of P1,460,000.00 based on 200,000 bags, at the rate of P7.30 per bag; in accordance with the "Letter of Agreement for Vessel/Barge Hire" which stipulated:

"xxx xxx xxx

2. Cargo : Corn Grains in Bags

3. Quantity : Two Hundred Thousand Bags, more or less

xxx xxx xxx

7. Freight Rate : Seven Pesos 30/100 (P7.30) per bag or a total of P1,460,000.00 based on out-turn weight at 50 kilos per bag. (Exh. A)"

The submission of petitioners is unsustainable. They theorize that what should be paid for was what was actually unloaded and not the number of bags of corn grains NFA contracted to load.

Under the law, the cargo not loaded is considered as deadfreight. It is the amount paid by or recoverable from a charterer of a ship for the portion of the ship's capacity the latter contracted for but failed to occupy.[8] Explicit and succinct is the law that the liability for deadfreight is on the charterer. The law in point is Article 680 of the Code of Commerce, which provides:

"Art. 680. A charterer who does not complete the full cargo he bound himself to ship shall pay the freightage of the amount he fails to ship, if the captain does not take other freight to complete the load of the vessel, in which case the first charterer shall pay the difference, should there be any."

Petitioners anchor their stance on the phrase "200,000 bags, more or less," which, according to them, meant more than 200,000 or less than 200,000 bags. As what was actually unloaded was less than 200,000 bags, NFA should only to pay for the freight therefor and not for 200,000 bags; petitioners contend.

Petitioners' contention is untenable. The words "more or less" when used in relation to quantity or distance, are words of safety and caution, intended to cover some slight or unimportant inaccuracy. It allows an adjustment to the demands of circumstances which do not weaken or destroy the statements of distance and quantity when no other guides are available.[9]

In fact, it is further disclosed by the evidence that there was a communication from NFA Administrator Emil Ong to Oscar Sanchez, Manager of Hongfil Shipping Corporation, stating clearly that the vessel M/V CHARLIE/DIANE was chartered to "load our 200,000 bags corn grains from Cagayan de Oro to Manila at P7.30 per 50 kg./bag." [10] Therefrom, it can be gleaned unerringly that the charter party was to transport 200,000 bags of corn grains.

It is thus decisively clear that the letter of agreement covered 200,000 bags of corn grains but only 166,798 bags were unloaded at the Port of Manila. Consequently, shut-out load or deadfreight of 33,201 bags at P7.30 per bag or P242,367.30 should be paid by NFA to Hongfil Shipping Corporation.

On the second issue of whether or not petitioner is liable for the payment of demurrage, petitioners theorize that NFA is not liable for the payment of demurrage since the "Letter of Agreement for Vessel/Barge Hire" expressly stipulated "Demurrage/Dispatch: NONE."

The Court of Appeals, however, adjudged petitioners liable for demurrage, ratiocinating thus:

"As regards the claim for demurrage, the letter of agreement between the parties does not contain any provision for the amount of demurrage, which is "the sum fixed by the contract of carriage, or which is allowed, as remuneration to the owner of the ship for the detention of his vessel beyond the number of days allowed by the charter party for loading or unloading or for sailing (Agbayani, Commercial Laws of the Philippines, Vol. IV, 1983 ed, p. 243). Nonetheless, despite the absence of an express provision on demurrage in the agreement, such demurrage may be demanded under the law. Article 656 of the Code of Commerce provides:

`Article 656. If in the charter party the time in which the loading or unloading are to take place is not stated, the usages of the port where these acts are to take place shall be observed. After the stipulated customary period has passed, and there is no express provision in the charter party fixing the indemnity for delay, the Captain shall be entitled to demand demurrage for the lay days and extra lay days which may have elapsed in loading and unloading.'"(underscoring supplied)

While the right to demand demurrage is vested in the captain of the vessel, the said right may very well be exercised by the shipowner appellee which is the principal of the captain.

Moreover, while the causes of delay may not be wholly attributable to appellant NFA (except the old and defective bags or sacks used), the same may not also be blamed on appellee Hongfil (except the allegedly defective munkcrane)."

Incidentally , the Office of the Government Corporate Counsel, in its Opinion No. 130, series of 1987, dated December 9, 1987, which is of persuasive force, opined that appellant NFA is liable for both deadfreight and demurrage (Exhs. O and P)."[11]

Demurrage is the sum fixed in a charter party as a remuneration to the owner of the ship for the detention of his vessel beyond the number of days allowed by the charter party for loading or unloading or for sailing.[12] Liability for demurrage, using the word in its strict technical sense, exists only when expressly stipulated in the contract.[13]

Shipper or charterer is liable for the payment of demurrage claims when he exceeds the period for loading or unloading as agreed upon or the agreed "laydays". The period for such may or may not be stipulated in the contract.[14] A charter party may either provide for a fixed laydays or contain general or indefinite words such as "customary quick dispatch" or "as fast as the steamer can load."

In the case under scrutiny, the charter party provides merely for a general or indefinite words of "customary quick dispatch."

The stipulation "Laydays (Loading and Unloading): Customary Quick Dispatch" implies that loading and unloading of the cargo should be within a reasonable period of time. Due diligence should be exercised according to the customs and usages of the port or ports of call. The circumstances obtaining at the time of loading and unloading are to be taken into account in the determination of "Customary Quick Dispatch." [15]

What is a reasonable time depends on the existing as opposed to normal circumstances, at the port of loading and the custom of the port.[16]

While what was certified to by the arrastre did not tally with the actual period of loading and unloading, it appears that the cause of delay was not imputable to either of the parties. The cause of delay during the loading was the strike staged by the crew of the arrastre operator, and the unavailability of a berthing space for the vessel during the unloading. The lack of a berthing space was understandable under the circumstances since the North Harbor in Manila, where the unloading took place, is a large port but there was congestion due to the number of ships or vessels which were all waiting to dock.

Delay in loading or unloading, to be deemed as a demurrage, runs against the charterer as soon as the vessel is detained for an unreasonable length of time from the arrival of the vessel because no available berthing space was provided for the vessel due to the negligence of the charterer or by reason of circumstances caused by the fault of the charterer.

In the present case, charterer NFA could not be held liable for demurrage for the delay resulting from the aforementioned circumstances. The provision "Laydays: Customary Quick Dispatch" invoked by Hongfil is unavailing as a basis for requiring the charterer to pay for demurrage absent convincing proof that the time for the loading or unloading in question was beyond the "reasonable time" within the contemplation of the charter party. Here, the Court holds that the delay sued upon was still within the "reasonable time" embraced in the stipulation of "Customary Quick Dispatch."

In a contract of affreightment, the shipper or charterer merely contracts a vessel to carry its cargo with the corresponding duty to provide for the berthing space for the loading or unloading. Charterer is merely required to exercise ordinary diligence in ensuring that a berthing space be made available for the vessel. The charterer does not make itself an absolute insurer against all events which cannot be foreseen or are inevitable. The law only requires the exercise of due diligence on the part of the charterer to scout or look for a berthing space.

Furthermore, considering that subject contract of affreightment contains an express provision "Demurrage/Dispatch: NONE," the same left the parties with no other recourse but to apply the literal meaning of such stipulation. The cardinal rule is that where, as in this case, the terms of the contract are clear and leave no doubt over the intention of the contracting parties, the literal meaning of its stipulations is controlling.[17]

The provision "Demurrage/Dispatch: NONE" can be interpreted as a waiver by Hongfil of the right to claim for demurrages. Waiver is a renunciation of what has been established in favor of one or for his benefit, because he prejudices nobody thereby; if he suffers loss, he is the one to blame.[18] As Hongfil freely entered into subject charter party which providing for "Demurrage/Dispatch: NONE," it cannot escape the inevitable consequence of its inability to collect demurrage. Well-settled is the doctrine that a contract between parties which is not contrary to law, morals, good customs, public order or public policy, is the law binding on both of them.[19]

On the issue of whether personal civil liability may attach to the officers of NFA, the court rules in the negative.

In the case of MAM Realty vs. NLRC,[20] the Court held that a corporation, being a juridical entity, may act only through its officers, directors and employees. Obligations incurred or contracted by them, acting as such corporate agents, are not theirs but the direct accountability of the corporation they represent.

The exceptions wherein personal civil liability may attach to a corporate officer are:

- When directors and trustees or, in appropriate cases, the officers of a corporation-
- vote for or assent to patently unlawful acts of the corporation;
- act in bad faith or with gross negligence in directing the corporate affairs;
- are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons.
- When a director or officer has consented to the issuance of watered stocks, or who, having knowledge thereof, did not forth with file with the corporate secretary his written objection thereto.
- When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation.
- When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action."[21] (*italics supplied*)

The present case under scrutiny does not fall under any of such exceptions. A careful perusal of the contract litigated upon reveals that the petitioners, as officers of NFA, did not bind themselves to be personally liable nor did they ink any undertaking that should NFA fail to pay Hongfil's claims, they would be personally liable. Hongfil has not cited any provision of law under which the officers of NFA are liable under the contract entered into.

What is more, there is nothing on record to show that the petitioner-officers acted in bad faith or were guilty of gross negligence, to warrant personal liability. Neither the trial court nor the Court of Appeals found of bad faith or gross negligence on the part of the said officers of NFA.

Bad faith or negligence is a question of fact and is evidentiary. It has been held that "bad faith does not simply mean bad judgment or negligence; it imparts a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill-will; it partakes of the nature of fraud."[22]

As regards the deletion by the Court of Appeals of the attorney's fees awarded below, the same is upheld, absent any factual and legal basis therefor.

WHEREFORE, the decision of the Court of Appeals, dated November 29, 1990, in CA G.R. CV No. 21243 is hereby **AFFIRMED** with **MODIFICATION**. Petitioner NFA is ordered to pay Hongfil Shipping Corporation the amount of P242,367.30 for deadfreight. The award of P1,152,687.50 for demurrage is deleted and set aside for

lack of proper basis.

Petitioners Roselinda Geraldez, Ramon Sargan and Adelina A. Yap are absolved of any liability to the respondent corporation.

No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] CA-G.R. C.V. No. 21243 Sixteenth Division - J Lapena, Jr., Nicolas, ponente and JJ. Pronove, Ricardo L. Jr. and Montoya, Salome A. concurring.

[2] dated February 28, 1989 penned by Judge Milagros V. Caguioa.

[3] Rollo, p. 32.

[4] Rollo, p. 33.

[5] Rollo, Ibid.

[6] Rollo, p. 39.

[7] Coastwise Lighterage Corporation vs. Court of Appeals, 245 SCRA 796.

[8] Black's Law Dictionary, Fifth Ed., p. 358

[9] Sta. Ines Melale Forest Products Corporation vs. Macaraig, G.R. No. 80849, December 2, 1998.

[10] Rollo, p. 60.

[11] Rollo, pp. 7-8.

[12] Black's Law Dictionary, Fifth Ed. p. 389.

[13] Magellan Manufacturing Marketing Corp. vs. Court of Appeals; 201 SCRA 102.

[14] O' Farrel y Cia vs. The Manila Electric Co., 54 Phil. 7.

[15] Taisho Kaiun Kabushiki Kaishu vs. Gano Moore Co., D.C. Del, 14 F 2.. d.

[16] Hernandez, Eduardo and Penasales, Antero. Philippine Admiralty and Maritime Law, First Ed. 1987, page 512, citing Scrutton, op cit. 319, et seq.

[17] Abella vs. Court of Appeals, 257 SCRA 482.

[18] Tolentino, Arturo. Civil Code of the Philippines, Volume I, pp. 29-30.

[19] Philippine American Life Insurance Company vs. Pineda, 175 SCRA 416.

[20] 244 SCRA 797.

[21] Santos vs. NLRC, 254 SCRA 673.

[22] Board of Liquidators vs. Kalaw, 20 SCRA 987, p. 1007.

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