

K.K. SHELL SEKIYU OSAKA HATSUBAISHO AND FU HING OIL CO., LTD., PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, ATLANTIC VENUS CO., S.A., AND THE VESSEL M/V ESTELLA, RESPONDENTS.

G.R. Nos. 90306-07. July 30, 1990

Ponente: CORTES, J.

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CORTES, J.:

Ordinarily, the Court will not disturb the factual findings of the Court of Appeals, these being considered final and conclusive. However, when its factual conclusions are manifestly mistaken, the Court will step in to correct the misapprehension [*De la Cruz v. Sosing*, 94 Phil. 26 (1953); *Castillo v. Court of Appeals*, G.R. No. L-48290, September 29, 1983, 124 SCRA 808.] This case is one such instance calling for the Court's review of the facts.

On January 7, 1987, Kumagai Kaiun Kaisha, Ltd. (hereinafter referred to as "Kumagai"), a corporation formed and existing under the laws of Japan, filed a complaint for the collection of a sum of money with preliminary attachment against Atlantic Venus Co., S.A. (hereinafter referred to as "Atlantic"), a corporation registered in Panama, the vessel MV Estella and Crestamonte Shipping Corporation (hereinafter referred to as "Crestamonte"), a Philippine corporation. Atlantic is the owner of the MV Estella. The complaint, docketed as Civil Case No. 87-38930 of the Regional Trial Court, Branch XIV, Manila, alleged that Crestamonte, as bareboat charterer and operator of the MV Estella, appointed N.S. Shipping Corporation (hereinafter referred to as "NSS"), a Japanese corporation, as its general agent in Japan. The appointment was formalized in an Agency Agreement. NSS in turn appointed Kumagai as its local agent in Osaka, Japan. Kumagai supplied the MV Estella with supplies and services but despite repeated demands Crestamonte failed to pay the amounts due.

NSS and Keihin Narasaki Corporation (hereinafter referred to as "Keihin") filed complaints-in-intervention.

On May 19, 1987, petitioner Fu Hing Oil Co., Ltd (hereinafter referred to as "Fu Hing"), a corporation organized in Hong Kong and not doing business in the Philippines, filed a motion for leave to intervene with an attached complaint-in-intervention, alleging that Fu Hing- supplied marine diesel oil/fuel to the MV Estella and incurred barge expenses for the total sum of One Hundred Fifty-Two Thousand Four Hundred Twelve Dollars and Fifty-Six Cents (US\$152,412.56) but such has remained unpaid despite demand and that the claim constitutes a maritime lien. The issuance of a writ of attachment was also prayed for.

On July 16, 1987, petitioner K.K. Shell Sekiyu Osaka Hatsubaisho (hereinafter referred to as "K.K. Shell"), a corporation organized in Japan and not doing business in the Philippines, likewise filed a motion to intervene with an attached complaint-in-intervention, alleging that upon request of NSS, Crestamonte's general agent in Japan, K.K. Shell provided and supplied marine diesel oil/fuel to the MV Estella at the ports of Tokyo and Mutsure in Japan and that despite previous demands Crestamonte has failed to pay the amounts of Sixteen Thousand Nine Hundred Ninety-Six Dollars and Ninety-Six Cents (US\$16,996.96) and One Million Yen (¥1,000,000.00) and that K.K. Shell's claim constitutes a maritime lien on the MV Estella. The complaint-in-intervention sought the

issuance of a writ of preliminary attachment.

The trial court allowed the intervention of Fu Hing and K.K. Shell on June 19, 1987 and August 11, 1987, respectively. Writs of preliminary attachment were issued on August 25, 1987 upon posting of the appropriate bonds. Upon the posting of counterbonds, the writs of attachment were discharged on September 3, 1987.

Atlantic and the MV Estella moved to dismiss the complaints-in-intervention filed by Fu Hing and K.K. Shell.

In the meantime, Atlantic and the MV Estella filed a petition in the Court of Appeals against the trial court judge, Kumagai, NSS and Keihin, docketed as CA-G.R. SP No. 12999, which sought the annulment of the orders of the trial court dated April 30, 1987 and August 11, 1987. Among others, the omnibus order dated August 11, 1987 denied the motion to reconsider the order allowing Fu Hing's intervention and granted K.K. Shell's motion to intervene. Again Fu Hing and K.K. Shell intervened. CA-G.R. SP No. 12999 was consolidated with another case (CA-G.R. SP No. 12341). Fu Hing and K.K. Shell intervened in CA-G.R. SP No. 12999.

In a decision dated June 14, 1989, the Court of Appeals annulled the orders of the trial court and directed it to cease and desist from proceeding with the case.

According to the Court of Appeals, Fu Hing and K.K. Shell were not suppliers but sub-agents of NSS, hence they were bound by the Agency Agreement between Crestamonte and NSS, particularly, the choice of forum clause, which provides:

12.0 - That this Agreement shall be governed by the Laws of Japan. Any matters, disputes, and/or differences arising between the parties hereto concerned regarding this Agreement shall be subject exclusively to the jurisdiction of the District Courts of Japan.

Thus, concluded the Court of Appeals, the trial court should have disallowed their motions to intervene.

A motion for reconsideration was filed by Fu Hing and K.K. Shell but this was denied by the Court of Appeals. Hence this petition.

In this case, we shall review the decision of the Court of Appeals only insofar as it relates to the intervention of K.K. Shell. Fu Hing Oil Co., Ltd. filed a motion to withdraw as co-petitioner on March 7, 1990, alleging that an amicable settlement had been reached with private respondents. The Court granted the motion on March 19, 1990.

After considering the pleadings filed by the parties and the arguments raised therein, the Court finds reversible error on the part of the Court of Appeals insofar as it disallowed petitioners' intervention in the case before the trial court and ordered the latter to cease and desist from proceeding with the case.

1. A reading of the Agency Agreement fails to support the conclusion that K.K. Shell is a sub-agent of NSS and is, therefore, bound by the agreement.

The body of the Agency Agreement entered into by and between Crestamonte (referred to in the agreement as "Owner") and NSS ("Agent") provides:

W I T N E S S E T H

That the OWNER has appointed and by these presents hereby appoints the AGENT as its General Agents for all Japan in connection with the Owner's vessels and/or providing suitable vessels for Japan Ports under the following terms and conditions:

1.0 - In general, the Agent will abide by the Owner's decisions regarding the mode of operations of the vessels in Japan and that all cargo bookings, vessel's fixtures/charters, etc. by the Agent, shall always be subject to the prior approval and consent of the Owners.

2.0 - That the Agent shall provide for the necessary services required for the husbanding of the Owner's vessels in all Japan Ports and issue Bill(s) of Lading to Shippers in the form prescribed by the Owners.

3.0 - That the Agent shall be responsible for fixing south-bound cargoes with revenues sufficient to cover ordinary liner operation expenses such as bunkers, additives, lubricating oil, water, running repairs, drydocking expenses, usual port disbursement accounts, cargo handling charges including stevedorage, provisions and ship's stores and cash advance to crew (excluding crew provisions).

The Agent expressly agrees that the Owner's cash flow in Japan shall be essentially the Agent's responsibility, and should the revenue for south-bound cargoes as above-mentioned be insufficient to cover the aforesaid expenses, the Agent shall provide credit to the extent of the vessels' requirements, provided however that said obligation shall be secured by the Owner committing at least forty-eight (48) sailings of Japan/Philippines liner service per year.

The Agent shall settle, in behalf of the Owner, all outstanding payments for the operation costs on Owner's liner service carried forward from the present Owner's agent, subject to approval of Owner's Representative in Japan in regard to amount and nature thereof.

4.0 - That the agent shall furnish office space of approximately thirty (30) square meters for the exclusive use of the Owner and its representatives, within the premises of the Agent's office, free of charge.

5.0 - That the responsibilities of the Agent in regard to the cargo shall begin, in the case of imports into the territory of Japan, from the time such cargo has left the ship's tackles, and shall cease, in case of export, upon completion of loading.

6.0 - That the remuneration of the Agent from the Owner shall be as follows:

* * *

7.0 - That the Agent shall exert best efforts to recommend to Owners stevedoring and other expenses incurred in connection with work on board the Owner's vessels, as well as customs house charges, pilotage, harbour dues, cables, etc. which are for Owner's account, on the cheapest possible terms. Owners shall decide and may appoint through the Agent the services described herein.

8.0 - That the Agent shall be responsible for the due collection of and due payment to the Owner of all outward freight prepaid for cargo without delay upon the sailing of each vessel from the port. The Agent shall be also responsible for the due collection of all inward freight payable at the port against delivery unless otherwise instructed by the Owner to the contrary.

9.0 - The account statements supported by vouchers in two copies itemized for each service and/or supply for each vessel, shall be forwarded by the Agent to the Owner promptly after the departure of each vessel but in no case later than 60 days thereafter.

10.0 - That the freightage to be collected by the Agent in Japan shall be paid to the Owner after deducting the total amount of disbursements incurred in Japan.

11.0 - That this Agreement takes effect as of April 15, 1983 and shall remain in force unless terminated by either party upon 60 days notice.

12.0 - That this Agreement shall be governed by the Laws of Japan. Any matters, disputes, and/or differences arising between the parties hereto concerned regarding this Agreement shall be subject exclusively to the jurisdiction of the District Courts of Japan. [Annex "G" of the Petition, Rollo, pp. 100--104.]

No express reference to the contracting of sub-agents or the applicability of the terms of the agreement, particularly the choice-of-forum clause, to sub-agents is made in the text of the agreement. What the contract

clearly states are NSS' principal duties, i.e., that it shall provide for the necessary services required for the husbanding of Crestamonte's vessels in Japanese ports (section 2.0) and shall be responsible for fixing south-bound cargoes with revenues sufficient to cover ordinary expenses (section 3.0).

Moreover, the complaint-in-intervention filed by K.K. Shell merely alleges that it provided and supplied the MV Estella with marine diesel oil/fuel, upon request of NSS who was acting for and as duly appointed agent of Crestamonte (Rollo, pp. 116-117.) There is thus no basis for the Court of Appeal's finding, as regards K.K. Shell in relation to its intervention in Civil Case No. 87-38930, that "the sub-agents admitted in their pleadings that they were appointed as local agent/sub-agent or representatives by NSS by virtue of said Agency Agreement" [Decision, p. 7; Rollo, p. 33.] What the Court of Appeals could have been referring to was K.K. Shell's Urgent Motion for Leave to Intervene dated February 24, 1987 in another case (Civil Case No. 86-38704) in another court and involving other vessels (MV Ofelia and MV Christina C), where it was alleged that K.K. Shell is "one of the representatives of N.S. Shipping Corporation for the supply of bunker oil, fuel oil, provisions and other necessities to vessels of which N.S. Shipping Corporation was the general agent." [Comment, p. 17; Rollo, p. 274.] However, this allegation does not conclusively establish a sub-agency between NSS and K.K. Shell. It is therefore surprising how the Court of Appeals could have come to the conclusion, just on the basis of the Agency Agreement and the pleadings filed in the trial court, that "Crestamonte is the principal, NSS is the agent and . . . Fu Hing and K.K. Shell are the sub-agents." [Decision, p. 6; Rollo, p. 32.]

In view of the inconclusiveness of the Agency Agreement and the pleadings filed in the trial court, additional evidence, if there be any, would still have to be presented to establish the allegation that K.K. Shell is a sub-agent of NSS.

In the same vein, as the choice-of-forum clause in the agreement (paragraph 12.0) has not been conclusively shown to be binding upon K.K. Shell, additional evidence would also still have to be presented to establish this defense. K.K. Shell cannot therefore, as of yet, be barred from instituting an action in the Philippines.

2. Private respondents have anticipated the possibility that the courts will not find that K.K. Shell is expressly bound by the Agency Agreement, and thus they fall back on the argument that even if this were so, the doctrine of forum non conveniens would be a valid ground to cause the dismissal of K.K. Shell's complaint-in-intervention.

K.K. Shell counters this argument by invoking its right as maritime lienholder. It cites Presidential Decree No. 1521, the Ship Mortgage Decree of 1978, which provides:

SEC. 21. Maritime Lien for Necessaries: person entitled to such lien. - Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessities, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall be necessary to allege or prove that credit was given to the vessel.

Private respondents on the other hand argue that even if P.D. No. 1521 is applicable, K.K. Shell cannot rely on the maritime lien because the fuel was provided not exclusively for the benefit of the MV Estella, but for the benefit of Crestamonte in general. Under the law it must be established that the credit was extended to the vessel itself. Now, this is a defense that calls precisely for a factual determination by the trial court of who benefited from the delivery of the fuel. Hence, again, the necessity for the reception of evidence before the trial court.

In other words, considering the dearth of evidence due to the fact that the private respondents have yet to file their answer in the proceedings below and trial on the merits is still to be conducted, whether or not petitioners are indeed maritime lienholders and as such may enforce the lien against the MV Estella are matters that still have to be established.

Neither are we ready to rule on the private respondents' invocation of the doctrine of forum non conveniens, as the exact nature of the relationship of the parties is still to be established. We leave this matter to the sound discretion of the trial court judge who is in the best position, after some vital facts are established, to determine whether special circumstances require that his court desist from assuming jurisdiction over the suit.

It was clearly reversible error on the part of the Court of Appeals to annul the trial court's orders, insofar as K.K. Shell is concerned, and order the trial court to cease and desist from proceeding with Civil Case No. 87-38930. There are still numerous material facts to be established in order to arrive at a conclusion as to the true nature of the relationship between Crestamonte and K.K. Shell and between NSS and K.K. Shell. The best recourse would have been to allow the trial court to proceed with Civil Case No. 87-38930 and consider whatever defenses may be raised by private respondents after they have filed their answer and evidence to support their conflicting claims has been presented. The Court of Appeals, however, substituted its judgment for that of the trial court and decided the merits of the case, even in the absence of evidence, on the pretext of reviewing an interlocutory order.

WHEREFORE, the petition is GRANTED and the decision of the Court of Appeals is REVERSED in CA-G.R. SP No. 12999, insofar as it annulled the order of the August 11, 1987 and directed the trial court to cease and desist from proceeding with Civil Case No. 87-38930.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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