

## THIRD DIVISION

[ G.R. No. 184513, March 09, 2016 ]

**DESIGNER BASKETS, INC., PETITIONER, VS. AIR SEA  
TRANSPORT, INC. AND ASIA CARGO CONTAINER LINES, INC.,  
RESPONDENTS.**

### D E C I S I O N

**JARDELEZA, J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> of the August 16, 2007 Decision<sup>[2]</sup> and September 2, 2008 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 79790, absolving respondents Air Sea Transport, Inc. (ASTI) and Asia Cargo Container Lines, Inc. (ACCLI) from liability in the complaint for sum of money and damages filed by petitioner Designer Baskets, Inc. (DBI).

#### The Facts

DBI is a domestic corporation engaged in the production of housewares and handicraft items for export.<sup>[4]</sup> Sometime in October 1995, Ambiente, a foreign-based company, ordered from DBI<sup>[5]</sup> 223 cartons of assorted wooden items (the shipment).<sup>[6]</sup> The shipment was worth Twelve Thousand Five Hundred Ninety and Eighty-Seven Dollars (US\$12,590.87) and payable through telegraphic transfer.<sup>[7]</sup> Ambiente designated ACCLI as the forwarding agent that will ship out its order from the Philippines to the United States (US). ACCLI is a domestic corporation acting as agent of ASTI, a US based corporation engaged in carrier transport business, in the Philippines.<sup>[8]</sup>

On January 7, 1996, DBI delivered the shipment to ACCLI for sea transport from Manila and delivery to Ambiente at 8306 Wilshire Blvd., Suite 1239, Beverly Hills, California. To acknowledge receipt and to serve as the contract of sea carriage, ACCLI issued to DBI triplicate copies of ASTI Bill of Lading No. AC/MLLA601317.<sup>[9]</sup> DBI retained possession of the originals of the bills of lading pending the payment of the goods by Ambiente.<sup>[10]</sup>

On January 23, 1996, Ambiente and ASTI entered into an Indemnity Agreement (Agreement).<sup>[11]</sup> Under the Agreement, Ambiente obligated ASTI to deliver the shipment to it or to its order "without the surrender of the relevant bill(s) of lading due to the non-arrival or loss thereof."<sup>[12]</sup> In exchange, Ambiente undertook to indemnify and hold ASTI and its agent free from any liability as a result of the release of the shipment.<sup>[13]</sup> Thereafter, ASTI released the shipment to Ambiente without the knowledge of DBI, and without it receiving payment for the total cost of the shipment.<sup>[14]</sup>

DBI then made several demands to Ambiente for the payment of the shipment, but to no avail. Thus, on October 7, 1996, DBI filed the Original Complaint against ASTI, ACCLI and ACCLFs incorporators-stockholders<sup>[15]</sup> for the payment of the value of the shipment in the amount of US\$12,590.87 or Three Hundred Thirty-Three and Six Flundred Fifty-Eight Pesos (P333,658.00), plus interest at the legal rate from January 22, 1996, exemplary damages, attorney's fees and cost of suit.<sup>[16]</sup>

In its Original Complaint, DBI claimed that under Bill of Lading Number AC/MLLA601317, ASTI and/or ACCLI is "to release and deliver the cargo/shipment to the consignee, x x x, only after the original copy or copies of [the] Bill of Lading is or are surrendered to them; otherwise, they become liable to the shipper for the value of the shipment."<sup>[17]</sup> DBI also averred that ACCLI should be jointly and severally liable with its co-defendants because ACCLI failed to register ASTI as a foreign corporation doing business in the Philippines. In addition, ACCLI failed to secure a license to act as agent of ASTI.<sup>[18]</sup>

On February 20, 1997, ASTI, ACCLI, and ACCLI's incorporators-stockholders filed a Motion to Dismiss.<sup>[19]</sup> They argued that: (a) they are not the real parties-in-interest in the action because the cargo was delivered and accepted by Ambiente. The case, therefore, was a simple case of nonpayment of the buyer; (b) relative to the incorporators-stockholders of ACCLI, piercing the corporate veil is misplaced; (c) contrary to the allegation of DBI, the bill of lading covering the shipment does not contain a proviso exposing ASTI to liability in case the shipment is released without the surrender of the bill of lading; and (d) the Original Complaint did not attach a certificate of non-forum shopping.<sup>[20]</sup>

DBI filed an Opposition to the Motion to Dismiss,<sup>[21]</sup> asserting that ASTI and ACCLI failed to exercise the required extraordinary diligence when they allowed the cargoes to be withdrawn by the consignee without the surrender of the original bill of lading. ASTI, ACCLI, and ACCLI's incorporators-stockholders countered that it is DBI who failed to exercise extraordinary diligence in protecting its own interest. They averred that whether or not the buyer-consignee pays the seller is already outside of their concern.<sup>[22]</sup>

Before the trial court could resolve the motion to dismiss, DBI filed an Amended Complaint<sup>[23]</sup> impleading Ambiente as a new defendant and praying that it be held solidarity liable with ASTI, ACCLI, and ACCLFs incorporators-stockholders for the payment of the value of the shipment. DBI alleged that it received reliable information that the shipment was released merely on the basis of a company guaranty of Ambiente.<sup>[24]</sup> Further, DBI asserted that ACCLI's incorporators-stockholders have not yet fully paid their stock subscriptions; thus, "under the circumstance of [the] case," they should be held liable to the extent of the balance of their subscriptions.<sup>[25]</sup>

In their Answer,<sup>[26]</sup> ASTI, ACCLI, and ACCLI's incorporators-stockholders countered that DBI has no cause of action against ACCLI and its incorporators-stockholders because the Amended Complaint, on its face, is for collection of sum of money by an unpaid seller against a buyer. DBI did not allege any act of the incorporators-stockholders which would constitute as a ground for piercing the veil of corporate

fiction.<sup>[27]</sup> ACCLI also reiterated that there is no stipulation in the bill of lading restrictively subjecting the release of the cargo only upon the presentation of the original bill of lading.<sup>[28]</sup> It regarded the issue of ASTI's lack of license to do business in the Philippines as "entirely foreign and irrelevant to the issue of liability for breach of contract" between DBI and Ambiente. It stated that the purpose of requiring a license (to do business in the Philippines) is to subject the foreign corporation to the jurisdiction of Philippine courts.<sup>[29]</sup>

On July 22, 1997, the trial court directed the service of summons to Ambiente through the Department of Trade and Industry.<sup>[30]</sup> The summons was served on October 6, 1997<sup>[31]</sup> and December 18, 1997.<sup>[32]</sup> Ambiente failed to file an Answer. Hence, DBI moved to declare Ambiente in default, which the trial court granted in its Order dated September 15, 1998.<sup>[33]</sup>

### **The Ruling of the Trial Court**

In a Decision<sup>[34]</sup> dated July 25, 2003, the trial court found ASTI, ACCLI, and Ambiente solidarity liable to DBI for the value of the shipment. It awarded DBI the following:

1. US\$12,590.87, or the equivalent of [P]333,658.00 at the time of the shipment, plus 12% interest per annum from 07 January 1996 until the same is fully paid;
2. [P]50,000.00 in exemplary damages;
3. [P]47,000.00 as and for attorney's fees; and,
4. [P]10,000.00 as cost of suit.<sup>[35]</sup>

The trial court declared that the liability of Ambiente is "very clear." As the buyer, it has an obligation to pay for the value of the shipment. The trial court noted that "[the case] is a simple sale transaction which had been perfected especially since delivery had already been effected and with only the payment for the shipment remaining left to be done."<sup>[36]</sup>

With respect to ASTI, the trial court held that as a common carrier, ASTI is bound to observe extraordinary diligence in the vigilance over the goods. However, ASTI was remiss in its duty when it allowed the unwarranted release of the shipment to Ambiente.<sup>[37]</sup> The trial court found that the damages suffered by DBI was due to ASTI's release of the merchandise despite the non-presentation of the bill of lading. That ASTI entered into an Agreement with Ambiente to release the shipment without the surrender of the bill of lading is of no moment.<sup>[38]</sup> The Agreement cannot save ASTI from liability because in entering into such, it violated the law, the terms of the bill of lading and the right of DBI over the goods.<sup>[39]</sup>

The trial court also added that the Agreement only involved Ambiente and ASTI. Since DBI is not privy to the Agreement, it is not bound by its terms.<sup>[40]</sup>

The trial court found that ACCLI "has not done enough to prevent the defendants

Ambiente and [ASTI] from agreeing among themselves the release of the goods in total disregard of [DBFs] rights and in contravention of the country's civil and commercial laws."<sup>[41]</sup> As the forwarding agent, ACCLI was "well aware that the goods cannot be delivered to the defendant Ambiente since [DBI] retained possession of the originals of the bill of lading."<sup>[42]</sup> Consequently, the trial court held ACCLI solidarily liable with ASTI.

As regards ACCLFs incorporators-stockholders, the trial court absolved them from liability. The trial court ruled that the participation of ACCLFs incorporators-stockholders in the release of the cargo is not as direct as that of ACCLI.<sup>[43]</sup>

DBI, ASTI and ACCLI appealed to the CA. On one hand, DBI took issue with the order of the trial court awarding the value of the shipment in Philippine Pesos instead of US Dollars. It also alleged that even assuming that the shipment may be paid in Philippine Pesos, the trial court erred in pegging its value at the exchange rate prevailing at the time of the shipment, rather than at the exchange rate prevailing at the *time of payment*.<sup>[44]</sup>

On the other hand, ASTI and ACCLI questioned the trial court's decision finding them solidarily liable with DBI for the value of the shipment. They also assailed the trial court's award of interest, exemplary damages, attorney's fees and cost of suit in DBFs favor.<sup>[45]</sup>

### **The Ruling of the Court of Appeals**

The CA affirmed the trial court's finding that Ambiente is liable to DBI, but absolved ASTI and ACCLI from liability. The CA found that the pivotal issue is whether the law requires that the bill of lading be surrendered by the buyer/consignee before the carrier can release the goods to the former. It then answered the question in the *negative*, thus:

**There is nothing in the applicable laws that require the surrender of bills of lading before the goods may be released to the buyer/consignee.** In fact, Article 353 of the Code of Commerce suggests a contrary conclusion, *viz—*

"Art. 353. After the contract has been complied with, the bill of lading which the carrier has issued shall be returned to him, and by virtue of the exchange of this title with the thing transported, the respective obligations shall be considered canceled xxx In case the consignee, upon receiving the goods, cannot return the bill of lading subscribed by the carrier because of its loss or of any other cause, he must give the latter a receipt for the goods delivered, this receipt producing the same effects as the return of the bill of lading."

The clear import of the above article is that the surrender of the bill of lading is not an absolute and mandatory requirement for the release of the goods to the consignee. **The fact that the carrier is given the alternative option to simply require a receipt for the goods delivered suggests that the surrender of the bill of lading may be**

**dispensed with when it cannot be produced by the consignee for whatever cause.**<sup>[46]</sup> (Emphasis supplied.)

The CA stressed that DBI failed to present evidence to prove its assertion that the surrender of the bill of lading upon delivery of the goods is a common mercantile practice.<sup>[47]</sup> Further, even assuming that such practice exists, it cannot prevail over law and jurisprudence.<sup>[48]</sup>

As for ASTI, the CA explained that its only obligation as a common carrier was to deliver the shipment in good condition. It did not include looking beyond the details of the transaction between the seller and the consignee, or more particularly, ascertaining the payment of the goods by the buyer Ambiente.<sup>[49]</sup>

Since the agency between ASTI and ACCLI was established and not disputed by any of the parties, neither can ACCLI, as a mere agent of ASTI, be held liable. This must be so in the absence of evidence that the agent exceeded its authority.<sup>[50]</sup>

The CA, thus, ruled:

**WHEREFORE**, in view of the foregoing, the Decision dated July 25, 2003 of Branch 255 of the Regional Trial court of Las [Piñas] City in Civil Case No. LP-96-0235 is hereby **AFFIRMED** with the following **MODIFICATIONS**:

1. Defendants-appellants Air Sea Transport, Inc. and Asia Cargo Container Lines, Inc. are hereby **ABSOLVED** from all liabilities;
2. The actual damages to be paid by defendant Ambiente shall be in the amount of US\$12,590.87. Defendant Ambiente's liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of payment,<sup>[51]</sup> and
3. The rate of interest to be imposed on the total amount of US\$12,590.87 shall be 6% per annum computed from the filing of the complaint on October 7, 1996 until the finality of this decision. After this decision becomes final and executory, the applicable rate shall be 12% per annum until its full satisfaction.

SO ORDERED.<sup>[52]</sup>

Hence, this petition for review, which raises the sole issue of whether ASTI and ACCLI may be held solidarily liable to DBI for the value of the shipment.

### **Our Ruling**

We deny the petition.

***A common carrier may release the goods to the consignee even without the surrender of the bill of lading.***

This case presents an instance where an unpaid seller sues not only the buyer, but the carrier and the carrier's agent as well, for the payment of the value of the goods